TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]

No. [redacted]276

THE FIRST NATIONAL BANK OF SAN JOSE, PLAINTIFF IN ERROR,

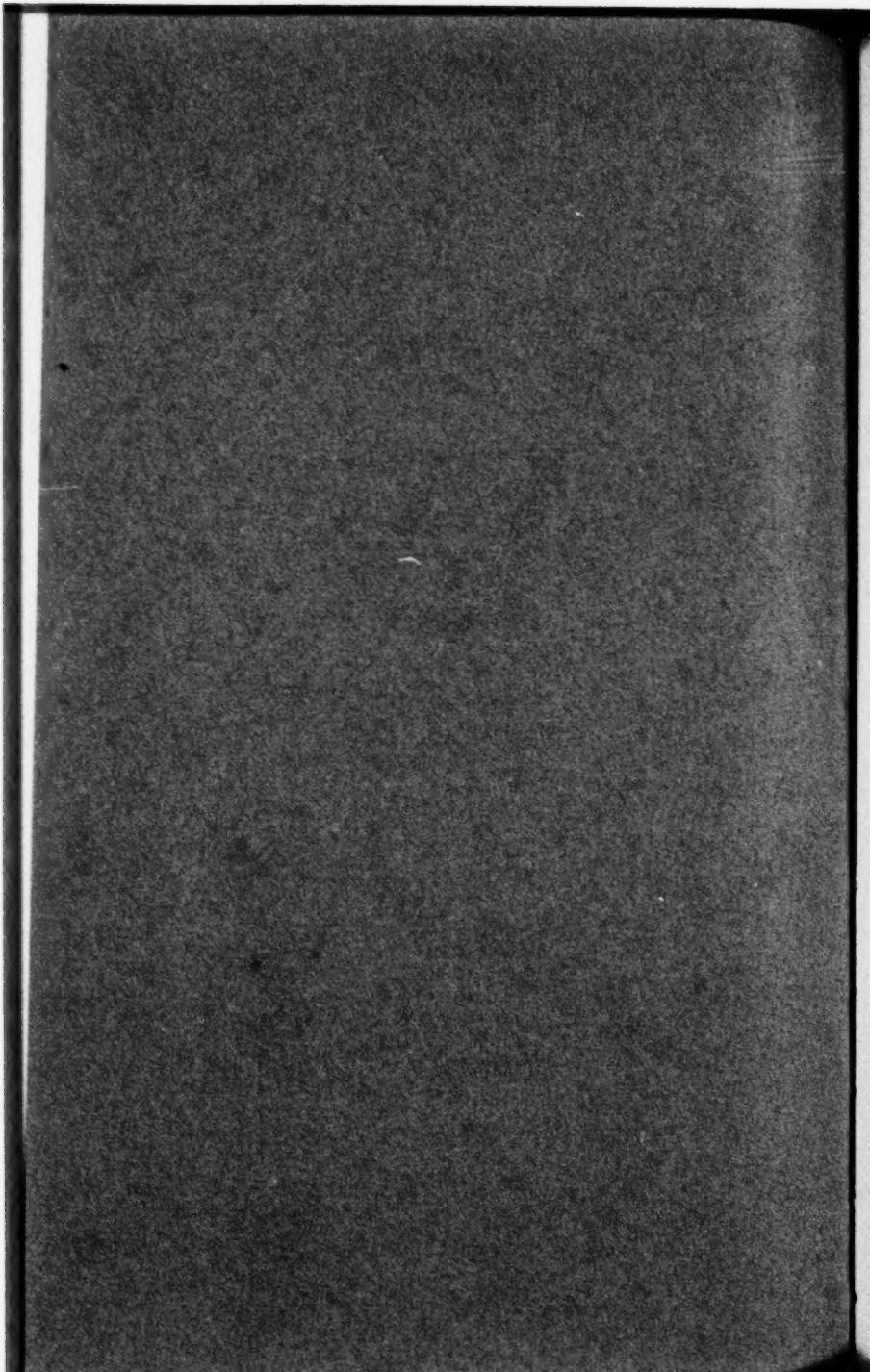
vs.

THE STATE OF CALIFORNIA AND U. S. WEBB, ATTORNEY GENERAL, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED [redacted]

(28,726)



(28,725)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 770.

THE FIRST NATIONAL BANK OF SAN JOSE, PLAINTIFF IN ERROR,

vs.

THE STATE OF CALIFORNIA AND U. S. WEBB, ATTORNEY GENERAL, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

INDEX.

	Original.	Print.
Record from the superior court of the State of California....	1	1
Complaint	1	1
Minute order No. 22,943.....	31	14
Answer	31	14
Findings of fact, Shields, J.....	41	19
Conclusions of law, Shields, J.....	46	21
Judgment	47	22
Notice of appeal.....	49	23
Stipulation as to transcript on appeal.....	52	24
Petition for hearing and determination of cause in supreme court of California.....	57	28
Opinion of court of appeals for the third appellate district of California, Burnett, J.....	93	42

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 28, 1922.

	Original.	Print
Order of supreme court granting petition	108	4
Opinion of supreme court, Shaw, J	111	4
Petition for rehearing	114	5
Order denying rehearing	141	6
Judgment	142	6
Petition for writ of error	143	6
Order granting writ of error and fixing bond	155	7
Assignment of errors	158	7
Bond on writ of error	166	8
Writ of error	169	8
Citation and service	173	8
Stipulation as to transcript	176	8
Clerk's certificate	180	8

Complaint.

No. 22943, Dept. 2.

In the Superior Court of the State of California in and for the County of Sacramento.

STATE OF CALIFORNIA, Plaintiff,

v.

THE ANGLE AND LONDON PARIS NATIONAL BANK OF SAN FRANCISCO, a Corporation, M. Athermour, Atlantic Packing Co., Bank of America Los Angeles, Clara Bibb, A. Bloch & Co., A. Bloch and John Doe Bloch, M. Briet, John Doe Bromley, J. W. Byrne, John Doe Castleberg, J. M. Chiz, M. C. Cheseman, Mrs. J. E. Derby, H. W. Duncan, H. De Latour, Mrs. J. A. Farrell, A. Faurardo & Co., A. Faurardo and John Doe Faurardo, H. L. Flahant, L. Godchaux, Fred Harrison, Geo. H. Heard, Int. Soc. of the Col. of R. & J., W. A. Kiefer, Karl Kohler & Co., Karl Kohler and John Doe Kohler, Lawson and Co., John Doe
2 Lawson and Richard Roe Lawson, A. Levi, J. D. Lobree, Henry Martin, Wm. McDonald, H. M. Meursing, G. J. Meyer, B. Mish, O. Moses, Olcese & Burnham, John Doe Olcese and Richard Roe Burnham, W. B. Prentice & Co., W. B. Prentice and John Doe Prentice, Thos. Rhodes, G. Rotanzi, Mrs. E. Rose, S. F. Underwear Co., Phil Seldner & Co., Phil Seldner and John Doe Seldner, Shawmate Mfg. Co., Sierra Furn. Co., Sonora Placer Mfg. Co., Max Sunderman, J. D. Sullivan, Taylor & Lavenson, John Doe Taylor and Richard Roe Lavenson, John Weiss, Mary M. Barnes, Falcon Mining Co., T. Hopkins, Jr., W. H. Johns, Geo. S. Ladd, F. McMaster, Oakley Co., Security Packing Co., Arizona Copper Co., W. C. Allburger, May T. Antin, C. C. Bear, G. L. Burkmeier, Blind Spring M. Co., Bric a Brac, Mrs. D. A. Barl, John Doe Boland, Jr., Carrie C. Bolles, C. C. Boseman, J. H. Bolles, W. Black, Bank of America, A. D. Blauer, Bonanza Gold Mg. Co., Geo. Bargate, J. H. Boalt, Bear Creek F. Co., Bacon Printing Co., Geo. Brunning, W. A. Bissett, J. D. Champion, F. A. Clark, Crystal Palace Assn., B. M. Crawford, Cleary Chester, Alex. Coner, J. R. Chapton, G. Campbell, Chamerlain & Co., John Doe Chamerlain and Richard Roe Chamerlain, California
3 Oregon Coop Co., P. D. Cranston, J. H. Curley, W. W. Dodge, A. G. Dun and H. D. Dun, H. C. Drinkwater, Dignon & Leonard, John Doe Dignan and Richard Roe Leonard, D. W. Donnelly, J. J. Donnelly, Eberhardt & Co., John Doe Eberhardt and Richard Roe Eberhardt, C. E. Ertz, Estate of Livingston, John Doe, Richard Roe and Mary Noe as heirs and legatees of the estate of John Doe Livingston, deceased, M. P. Foody, First National Bank of Spokane, R. M. Fryer, Fall River Mtle. Co. Foote and French, John Doe Foote and Richard Roe French, Fox

& Kellogg, John Doe Fox and Richard Roe Kellogg, Frank Cr. Co., John Doe Frank and Richard Roe Frank, J. B. Francis, John Doe Gallegos, Graves & Co., John Doe Graves and Richard Roe Graves, J. Goldsmith, Jas. Gould, J. H. Ganchin, W. L. Goldberg, R. R. Grayson, Geo. Grierson & Co., Geo. Grierson and John Doe Grierson, D. Henderson, A. C. Huey, Hostacher & Kohn, John Doe Hostacher and Richard Roe Kohn, A. K. Hollis, W. L. Hopkins, George Harris, Heath Mining Co., Harris Hyman, Geo. Hazelton, W. D. Hobro, H. Harris, C. W. Joy, Kern & Kibbler, John Doe Kern and Richard Roe Kibbler, Lakeview Mining Co., E. D. Luxton, John Doe Lipshur, S. Leven, Mrs. S. Lolwi, B. Marks, Masonic Mutual Aid, P. W. Millis, J. E.
4 Mason, H. M. Martin, E. A. Millard, Morebach & Short, John Doe Morebach and Richard Roe Short, M. E. Mayer & Co., M. E. Mayer and John Doe Mayer, P. Mish, J. F. Morse J. Meyers, J. J. McBride, J. McCafferty, M. P. McCrellish, J. J. McBride, Nevada Mining Co., Willis Nash, Geo. H. Nicoll and Co., Geo. H. Nicoll and Richard Roe Nicholl, J. H. Nash, Otto Norman, J. Nobman, Nat. Ice Skating Co., J. E. Owens, Oro Mining Co., Aug., F. Plate, Kee Poy, Pinal Co. Bank, M. Peyser, Geo. M. Penney, Quebrada Mg. Co., P. Rogers Bros. & Co., P. Rogers and John Doe Rogers, Isaac Hoe and George Goe, E. J. Robert, G. Ritzucaller, S. Ritzucaller, J. H. Ropke, Rosenfeld & Co., John Roe Rosenfeld and Richard Roe Rosenfeld, San Ricardo Mg. Co., S. P. Stow, G. Sandow, Scotty & Powell, John Doe Scotty and Richard Roe Powell, J. S. Samson, M. Schulhafer, Emil Sydow, South Side Land Co., A. Sittenfeld & Co., A. Sittenfeld and John Doe Sittenfeld, Suto Tunnel Co., W. F. Seaman, C. J. Swift, Stern Bros., John Doe Stern and Richard Roe Stern, Supreme Lodge O. G. S., Tacoma Nat., G. A. Treadwell, Tombstone Mfg. Co., Tinan & Ryan, John Doe Tinan and Richard Roe Ryan, Tombstone Mg. Co., Thirty fifth Par Assn., E. W. Townsend,
5 Taylor Mg. Co., Wollenberg & Flint, John Doe Wollenberg and Richard Roe Flint, A. Willkouse, Winsor Mg. Co., Chas. J. Walsh, J. H. Weddle, F. Welker, P. D. Winter, M. Weinberger, Ward & Saltenstall, John Doe Ward and Richard Roe Saltenstall, Paxton & Curtis, John Doe Paxton and Richard Roe Curtis, L. E. Walker, The Bank of California National Association, a corporation, Adriatic G. & S. Mng. Co., R. W. Allen, Jas. Allison, F. Amark, J. V. W. Auzerais, W. O. Ayers, Colgate Baker, L. Barrett, Berggren & Louthan, John Doe Berggren and Richard Roe Louthan, J. A. Burnett, Berkeley Ferry R. R. Co., J. Bernstein, H. C. Bell, W. F. Bennett, M. Block, Blue Jacket Mining Co., J. G. Bodge, J. G. Gove, C. R. Bowen, F. S. A. Boyer, Wm. Bradford, R. M. Brereton, Brilliant Mfg. Co., S. M. Brooks, Brown's Valley Con. Mng. Co., Salem Burdell, George Burnett, G. L. Burning, P. A. Brown, Geo. H. Bird, A. Cadwallader, California & Nevada R. R. Co., W. N. Chapman, China & Japan M. Insce Co., Clark Churchill, Jeremiah Clarke, Cobo & Martinez, John Doe Cobo and Richard Roe Martinez, I. Cook and Bro., I.

Cook and John Doe Cook, R. de Coursy, Frances L. Coy, Crawford & Foulds, John Doe Crawford and Richard Roe Foulds,
6 Crunago & Perry, John Doe Crunago and Richard Roe Perry, S. S. Culverwell, W. H. Cummings, Francis C. Davies, Dawson & Co., John Doe Dawson and Richard Roe Dawson, F. Desmesmay, Isaac Dobell, Hilda Duncan, Dr. J. S. Dungan, J. G. Eastman, R. H. Emerson, R. H. Emerson, Wm. F. Empey, Episcopal Fund Assn., N. S. Fairbanks, Farnsworth & Clark, John Doe Farnsworth and Richard Roe Clark, Farnsworth & Clark, John Doe Farnsworth and Richard Roe Clark, W. H. Fife, First Nat. Gold Bank Oregon, Litton Forbes, John Foster, A. Fossard, J. W. Foulks, L. W. Foulke, Selim Franklin, T. J. Gallgher, Gold Mg. Co. of Yuba Ld., J. B. Greenfield, Gumpertz & Brooks, John Doe Gumpertz and Richard Roe Brooks, Samuel Grove, Julia Green, S. S. Haley, Hamilton & Hastings, John Doe Hamilton and Richard Roe Hamilton, R. P. Hamilton, S. Hans, G. H. Harrington, Sophie Herrera, Hewson & Thomas, John Doe Hewson and Richard Roe Thomas, Hunt Automatic Loom Co., Hackberry Mfg. Co., Frank B. Isaacs, Frank B. Isaacs, Adolph Johnson, Francis Johnson, C. A. Jones, Wm. Jorres, C. F. Julliard, Keley & Andrews, John Doe Keley and Richard Roe Andrews, King & Ringen, John Doe King and Richard Roe Ringen, Phil Kitz,
7 M. J. Kinney, Jona Kittredge, John Kehoe, F. Koenig, H. Kohn, Langfeldt & Mayers, John Doe Langfeldt and Richard Roe Mayers, Julius Lasger, H. D. Lathrop, J. M. de Laveaga, John G. Liebert, S. Lipman & Co., S. Lipman and John Doe Lipman, S. Lipman & Co., S. Lipman and John Doe Lipman, J. M. Livingston, J. L. Luty, John W. Lynch, Wm. Manson, W. S. Mason, E. J. Mathews & Co., E. J. Mathews and John Doe Mathews, J. H. Mayhew, J. G. McCullum, J. I. McGrew, R. A. McLellan, Thomas McMurrin, P. Meager, N. F. Messer, Mrs. Martha Mitchell, Wm. Mollineaux, D. Murphy, Edward Myers, Northern King M. Mg. Co., Norton Mill Co., C. Norton, North Belmont Mg. Co., Oulif Dato & Co.,Oulif Dato and John Doe Dato, Page and Panaca S. Mg. Co., Palmer Bros., John Doe Palmer and Richard Roe Palmer, Pescia & De Nola, John Doe Pescia and Richard Roe De Nola, J. H. A. Pickens, F. W. Pierson W. Pinkerton, Poulterer & Verdenal, John Doe Poulterer and Richard Roe Verdenal, L. Racouillat, Randolph Saw Co., Raubinger & Co., John Doe Raubinger and Richard Roe Raubinger, F. W. Reichelt, Joseph Richards, E. V. Robbins, G. D. Roberts, M. R. Roberts, D. E. Roselle, Jane P. Row, H. R. Ryder, Santa Barbara Co. Bank,
8 Lorenzo Sawyer, B. Sbarbora, F. Schleifer & Co., F. Schleifer, and John Doe Schleifer, Schoenholz & Beerhoff, John Doe Schoenholz and Richard Roe Beerholff, L. Senders, Wm. J. Shaw, A. Silverberg, Wm. Fraser Smith, J. E. Sorbin, John Sparks, Wm. B. Stewart, R. J. Stewart, A. W. Stoddart, W. A. Strong, Wm. Stuart, Chas. A. Sumner, Sweetland Creek Mg. Co., G. B. Stoutenberg, South Navajo Mg. Co., Theall & Co., John Doe Theall and Richard Roe Theall, J. H. Thompson, C. B. Tilley, F. D.

Tobin, John M. Todd, F. Walton Todd, Ed. P. Tompkinson, M. D. Townsend, J. S. Treswick, Helena M. Tucker, Joseph J. Timmes, Ural S. Mng. Co., W. Von Recken & Co., W. Von Recken and John Doe Von Recken, Warrington Gold Mng. Co., Wason Con. Mng. Co., Jas. W. Webb, Paul Weber, John Wheatley, J. R. Wilcox, A. Wilkie, S. H. Willis, J. M. Wilson, W. A. Wilson, Capt. M. Wishmakoff, S. M. Wilson, Wolf Bros., John Doe Wolf and Richard Roe Wolf, F. S. Wood, Samuel Wormser, Wyoming Coal and Coke Co., Thomas Young, Yucca Mg. Co., Henry Meyers, Henry Pilster, H. W. Quitzlow, D. C. Riddell, Robert Rutledge, San Carlos Oil Co., Sbarbora & Co., John Doe Sbarbora and Richard Roe Sbarbora, Wm. Todd, A. Maurice Vurir, Stod-
9 dart & Lawrence, John Doe Stoddart and Richard Roe Lawrence, Union Gold Co., Candelaria Water Works Mlg. Co., Chas. Cowlard, P. M. Daniel, R. J. Northam, P. A. Roach, Wood Bros., John Doe Woods and Richard Roe Woods, John Doe Ellenhurst, The Crocker National Bank of San Francisco, a corporation, Althof & Co., John Doe Althof and Richard Roe Althof, J. C. Anthony & Co., J. C. Anthony and Richard Roe Anthony, Thos. S. Andrews, Bank of Anderson, Bacon & Dittelback, John Doe Bacon and Richard Roe Dittelback, Reu Baldwin, L. H. Bailey, H. K. Belden, U. O. Beeker, E. Beyfuss, F. A. Bettis, Geo. Backmon, W. H. Brown, Jas. Campbell, Cal Loan & Trust Co., Cal. Grape Food Co., Cherokee Hair Grower Co., E. W. Chapman, Clarita Land & Imp. Co., R. Clement, Jr., Cal. Cold Storage, Sumner W. Buckbee, Carrol Cook, Chas. O. Comstock, Conlon Gold Mining Co., John Conley, P. L. Grovat, Geo. Davidson, F. S. Denin, Jared S. Dodge, H. J. Dows, Dorn & Wentworth, John Doe Dorn and Richard Roe Wentworth, J. H. Drumgold, J. H. Durst, Durkee & Fitzgerald, John Doe Durkee and Richard Roe Fitzgerald, Ebner Bros., John Doe Ebner and Richard Roe Ebner, Edw. J. Epstein, F. M. Ferguson, Jno. T. Foulkes, Jno. T. Foulkes, Fort Bragg Redwood Co., J. H.
10 Frost, Frederick George, G. B. Gilman, Jno. H. Gilmore, H. C. Gilbert, Susie Gonzales, M. Goodkind, I. Goldtree, M. Goldtree & Co., M. Goldtree and John Doe Goldtree, Hattie Goldman, W. A. Harvey, L. J. Hanchett, Alex. Hay, Geo. H. Hayes, Nina Hayman, H. B. Hardt, Jackson Hart, Hermin Mfg. Co., Anna A. Heney, Harry Hillard, Home & Trust Co., M. K. Hopkins, Hulme & Palm, John Doe Hulme and Richard Roe Palm, Irma Gold Mfg. Co., D. B. Jackson, E. McD. Johnson, J. C. Jordan, Jr., H. Judson, Kackemack Coal Co., Allan Kelley, H. W. Lawrence, Geo. B. Larkin, Lewis & Burr, John Doe Lewis and Richard Roe Burr, Long Branch Dev. Co., Log Cabin Bakery Co., Burns Johnson Mackey, A. F. Martin, Mancopa & Phœnix R. R. Co., Marx & Co., John Doe Marx and Richard Roe Marx, Modest Maryanski, Mrs. Thos. Malqueen, H. W. Mitchell, L. G. Morce, D. L. Munson, J. E. McGowan, Jas. McFadden, Thos. McGinnis, C. D. McGowan & Co., C. D. McGowan and John Doe McGowan, Angus McPherson, Henry North, Oregon Stock & B. Co., Phil Oyer, John Doe Pfuhl, Isaac Pincus, Thos. Price, Thos. Price,

H. Prindle, J. S. Purdy, A. Onade, W. Ranke & Co., W.
11 Ranke and John Doe Ranke, Geo. B. Reeves, Geo. B. Reeves, Jno. M. Reynolds, Maurice Rosenthal, E. J. Robinson, S. B. Robbins, David Rutherford, Chas. Ryhner, Sylvia Solomon, Henry Schnier, Mrs. M. T. S. Searles, Richard Searle, H. S. Seaton, Jno. E. Spreck, E. L. Shannon, Jno. T. Sheehan, H. G. Sieberst, Bayard Smith, Franklin Smith, F. L. Southwick, M. V. Sparks, Street & Co., John Doe Street and Richard Roe Street, Jacob Strahle, John W. Taylor, Nason Taylor & Co., Nason Taylor and John Doe Taylor, Alfred Temple, John Doe Toubles, Tropic Coffee & Spice Co., Jos. E. Tucker, Waukasha Family Club, Warman-Schuff Cycle House, John Doe Warman and Richard Roe Schubb, Waldeck Hospital, T. B. Westcott, Ransom White, Fannie J. Whitney, Chas. Willand, Wilson & Co. M. Ry.. M. Wilson and John Doe Wilson, Harry L. Worden, World's Fair Trans. Co., Yosemite L. Comm., Emerson L. Young, E. W. Chapman, Clarita Land & Imp. Co., Geo. Davidson, Henry North, Thos. Price, Tropic Coffee & Spice Mills, Waldeck Hospital, First National Bank of San Francisco, a corporation, T. E. Alexander, I. P Allen, L. E. Allen, Alsatian Dye Works, J. Boyd Allen, American
C. O. Agency, Arenz & Dinsmore, John Doe Arenz and Rich-
12 ard Roe Dinsmore, W. Armstrong, J. Bayle, Bay Sugar Refining Co., N. Barth, Bartlett Mineral Springs, Thomas Bennett, Thomas Bennett, John Bekwell, C. H. Berton, A. Bergman, Bigelow and Morris, John Doe Bigelow and Richard Roe Morris, Blum and Company, John Doe Blum and Richard Roe Blum, Boyer and Morrow, John Doe Boyer and Richard Roe Morrow, D. Boito, William Bogen, Brown, Craig and Company, John Doe Brown, Richard Roe Craig and George Coe, A. J. Brilliant and Co., A. J. Brilliant and John Doe Brilliant, T. M. Brock, James M. Brown, Louis Bull, C. B. Byrne and Co., C. B. Byrne and John Doe Byrne, Cadman Bros., John Doe Cadman and Richard Roe Cadman, California Pressed Brick Company, California Hosiery Co., Central Hardware Tool Co., Cement Brick Company, H. Chipman, B. Chamberlain, H. C. Chester, Chino Valley Beet Sugar Co., J. E. Clemens, Hanora F. Cleary, H. Cowell, George Compton, Henry Cowell, F. W. Cords, Mattie Conway, F. C. Cooper and Co., F. C. Cooper and John Doe Cooper, M. Cohn, C. C. Crouse, Fannie Crocker, J. O. Culver, John A. Davis, C. W. Davis & Co., C. W. Davis and John Doe Davis, Daly and Flynn, John Doe
Daly and Richard Roe Flynn, D. Davis, C. R. De Burgh,
13 J. H. Deering, Dearborn Brs., John Doe Dearborn and Richard Roe Dearborn, Dean and Worden, John Doe Dean and Richard Roe Worden, H. C. Dibble, H. L. Dodge, C. W. Doane, E. R. Dodge, P. A. Dolan, Dunphy and Vernon, John Doe Dunphy and Richard Roe Vernon, W. A. Durant, J. H. Durth, Mrs. G. F. Dyer, Eagle Lake, H. Eaton, Edwards and Robb, John Doe Edwards and Richard Roe Robb, J. M. Ellis and Co., J. M Ellis and John Doe Ellis, Epstein and Co., John Doe Epstein and Richard Roe Epstein, First Doe, Second Doe and Third Doe as heirs of the estate of W. R. Briggs, deceased, Fourth Doe, Fifth

Doe and Sixth Doe as heirs of the estate of B. F. Newell, deceased, E. Everett and Co., E. Everett and John Doe Everett, Farmers Union, B. Farnsworth, J. H. Fallon, Mrs. A. Farrington, A. D. Falconer, C. Ferris, C. Ferris, J. A. Fessenberg, Chas. A. Fischer, H. Figel, Flynn and Toner, John Doe Flynn and Richard Roe Toner, C. W. Fraser, M. A. Frank, W. J. Galbraith, Jas. H. Garrett and Co., Jas. H. Garrett and John Doe Garrett, W. H. Gagen, Ph. Giannini, J. B. Gibson, Glanville and Co., John Doe Glanville and Richard Roe Glanville, Gordan Bros., John Doe Gorden and Richard Roe Gordan, Golden Treasure Mining Co., H. Goldstein, E. A. D. Gray, Thos. E. Griffin, W. A. Griffith, H. H. Gross, Charles
14 Greene, E. Guittard and Co., E. Guittard and John Doe Guittard, John W. Hagen, P. Haskell, H. G. Haines, A. J. Hamilton, C. J. Harris, Thos. Harding, M. A. Haskell, J. E. Harris, Otto Haller, Hayes Bros., John Doe Hayes and Richard Roe Hayes, J. Hetherington, J. Henley, E. Higgins and Co., E. Higgins and John Doe Higgins, A. Hirschman, S. A. Hill, C. M. Howe, O. O. Howard, Jr., E. W. Jensen, D. Jordan, F. Johnson and Co., F. Johnson and John Doe Johnson, Mrs. M. A. Jones, Johnson Company, Richard Roe Johnson and Isaac Hoe Johnson, Kaiser Mfg. Co., R. P. Keating, John Kenney, W. C. Kimball, T. B. King, Geo. A. Knight, J. W. Knox, A. Koch, Kormblis and Bros., John Doe Kormblis, Richard Roe Kormblis and Isaac Noe Kormblis, H. Kohler, J. Kraemer, E. B. Keene, W. D. Lawton and Co., W. D. Lawton and John Doe Lawton, H. E. Lawrence, F. A. Lawson and Co., F. A. Lawson and John Doe Lawson, Chas. Lanier, Joseph Lane, K. H. Lee, Jos. P. Lennon, R. F. Lord, Wm. T. Long, Mason Malt Works, H. M. McCormick, Edward McGrath, McKenna and Green, John Doe McKenna and Richard Roe Green, C. B. McCoy, J. J. McNamara, F.
15 Mehlwitz, Mehrten and Ahlers, John Doe Mehrten and Richard Roe Ahlers, John M. Miller, Miller, Morehead & McCune, John Doe Morehead and Richard Roe McCune, Thos. Morton, J. T. Morgan, T. B. Morton, Solfrini Morrison, N. E. Moy and Co., N. E. Moy and John Doe Moy, Muldoon and Leveque, John Doe Muldoon and Richard Roe Leveque, Mary C. Murray, John F. Naughton, Thos. Nelson, W. G. Nixon, W. H. Oliver, O'Hanlon and Ryam, John Doe O'Hanlon and and Richard Roe Ryam, W. H. Patterson, Pac. Coast Soap Company, Pac. Insurance Assn., G. M. Peace, D. C. Pixley, M. Pollasky, John Doe Prier, A. M. Radcliffe, J. Sanders Reid, W. J. Ritchie, J. A. Rose, C. P. Robinson, H. Rumelsburg, W. T. S. Ryer, Peter A. Sauret, F. Schen, R. J. Scott, R. Schoncholz and Co., F. Schoenholz and John Doe Schoenholz, Julia Schwartz, Percy Selby, W. Shiels, W. Sharp, Shoudy and Stewart, John Doe Shoudy and Richard Roe Stewart, W. J. Sherwood, Jas. S. Smith, W. R. Smith and Co., W. R. Smith and John Doe Smith, Mrs. E. E. Staples, Chas. Steiger, Jos. H. Stiles, T. J. Sullivan, W. H. Sudden, A. M. Sutton, P. J. Sullivan, Myles D. Sweeney, E. N. Tascott, W. A. Tepeair, A. F. Tenny Co., A. F. Tenny and John Doe Tenny, Upson
16 Thompson, D. M. Tomblin, Trust Funds Ins. Co., N. W. Trezavant, R. E. Turner, Belle Turner, L. Van Fossen, S.

B. Wakefield, W. Ware, A. S. Wells, West Coast Dev. Co., W. F. Welcker, Welsh Maple Company, C. D. Wheat, Thos. B. Willis, W. Williams, S. Williamson, J. Williams, T. L. Wooster, Woodworth Company, John Doe Woodworth and Richard Roe Woodworth, First National Bank of San Jose, a corporation, P. A. Campbell, San Bernardino National Bank, a corporation, W. A. Adams, J. W. Allen, Wm. Alvord, M. Anderson, Anderson & King, John Doe Anderson and Richard Roe King, B. Augustine, W. I. Bates, Beam & Sesons, John Doe Beam and Richard Roe Sesons, John Doe Bosworth, W. A. Bradley, B. Branheardt, C. A. Bridge, A. A. Burcham, Geo. Brooks, B. Bussell, J. E. Burkhardt, Campbell & Wilsey, John Doe Campbell and Richard Roe Rilsey, R. S. Coffey, Chas. Costell, G. V. Coombs, M. F. Cropley, R. F. Cunningham, Cunningham & Co., John Doe Cunningham and Richard Roe Cunningham, J. J. Doyle, John Doe Davenport, A. S. Davis, H. A. Deal, E. M. Depew, Annie Dewitt, Laura De Groff, Eliz. Dodge, W. B. Dodson, C. Domaschenz, F. Eckhardt, Eckhardt and Severne, John Doe Severne, J. A. Estudillo, J. A.
17 Felerhof, Constance Ferris, P. D. Folks, J. C. Foster, G. C. Fox, G. W. Fox, Geo. Fyfe, N. D. Halpin, J. G. Halsey, H. J. Harding, F. W. Harding, John Harris, Wm. Harrison, Geo. Hedden, Joseph High, M. House, H. L. Hunt, Jensen and Silvers, J. A. Johnson, Johnson and Dickson, John Doe Johnson and Richard Roe Dickson, Robt. Kellijer, P. P. King, J. H. Kingman, T. B. Lawson, O. E. Leonard, Matt G. Louis, H. L. Martin, J. M. Martin, John Marton, Menzel, H. M. Miller, Wm. Marre, Morris & Young, John Doe Morris, Richard Roe Young, O. M. Morris, E. H. Morse, A. S. Morse, C. J. Moss, Wm. McDonald, J. W. McCracken, W. D. McGee, J. C. McNab, John H. Myrick, National Pharmacy, A. J. Newton, J. D. North, Kate O'Donner, W. M. Paine, J. R. Palmer, J. B. Pope, Dr. A. E. Phelan, E. A. Phillips, T. H. Polk, J. E. Potter, Ida Potts, N. A. Runkle, G. W. Reed, Albert Roche, M. N. Roach, M. E. Roll, Mrs. J. Ruffen, J. A. Shedd, H. T. Shirley, Geo. Silveria, E. W. Simpson, M. E. Smithson, W. E. C. Smith, W. R. Smith, P. Sullivan, E. E. Swanton, Geo. Thompson, G. W. Tyler, R. S. Thompson, S. G. Tuthill, J. E. Urie, U. S. Utter, W. G. Van Slyke, H. H. Wayckoff, J.
18 D. Warner, A. G. Walters, E. Westmorland, First National Bank of Santa Barbara, a corporation, Asa Adams, O. Ashbaugh, Ben Burton, Bankers Mutual B. Ass'n, H. C. Beckwith, R. L. Booth, Chas. Bott, E. Eagle, John A. Brown, Thos. B. Brown, H. Brundage, M. J. Brundage, W. S. Chamberlain, J. A. Churchill, Malinda Conklin, W. C. Cook, Mary L. Coolidge, C. M. Cooley, Mrs. Cora Croman, Jas. B. Dean, H. B. Dewing, John M. Dickerson, L. N. Dimmick, John Doerr, Josiah Doulton, Mary J. Dubbs, J. E. Dunphy, Edna Earl, Anna W. Finch, Elizabeth Ferries, A. Fluehe, R. F. Fullington, S. W. Gilchrist, Giovanetti Brothers, John Doe Giovanetti and Richard Roe Giovanetti, J. M. Garretson, Jean C. Green, Thos. E. Haigh, J. K. Harrington, A. M. Hayward, Elizabeth Higgins, F. L. Higgins, H. C. Hooker, J. Bradford Jobling, Chas. E. Jobling, B. B. Keeler, John Keenan, E. H. Knight, A. Leslie, G. W. Lewis, W. L. Locke, J. J. Lonergan,

J. Eleanor Low, J. A. McGuire, Jas. Meroux, Ira E. Martin, W. S. Mesick, I. K. Fisher, Treas. Midwinter Fair, Fred A. Moore, F. S. Morehead, W. H. Morrill, Winifred C. Musgrave, Margaret McCabe, Annie McMaster, Chas. Nolan, Patrocp Onteveros, C. H. Paddock, W. Y. Patch, J. E. Patterson, E. D. Perkins, B. F.
19 Pettis, H. A. Plate, R. D. Rennie, Guy McL. Richards, W. N. Roberts, W. N. Roberts, John Rudolph, Santa Barbara Music Co., Caroline W. Schwab, V. N. Senteney, C. J. Shaw, G. B. Shaw, John Slattery, N. W. Smith, E. W. Stafford, Fidenck Stock, Henry Stoddard, G. T. Smith, J. W. Sweat, Chas E. Swain, Ben Sprague, W. H. Sudden, Louis C. Taylor, Bayard Thayer, G. E. Thurmond, Lydia B. Torry, Thos. Turton, E. Valencia, Marion F. Wells, J. B. Wentling, Chas. Westlake, F. A. Wood, John Doe, Richard Roe, Isaac Hoe, George Goe, Mary Noe, First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, Sixth Doe, Seventh Doe, Eighth Doe and Ninth Doe, Defendants.

Complaint.

Now comes the plaintiff, State of California, and complaining of defendants, alleges:

I.

That the Anglo & London Paris National Bank of San Francisco, The Bank of California National Association, The Crocker National Bank of San Francisco, First National Bank of San Francisco, First National Bank of San Jose, San Bernardino National Bank, and First National Bank of Santa Barbara, are, and at all times
20 herein mentioned were, corporations doing a banking business in the State of California.

II.

That more than twenty years prior to the institution of this action there was deposited with each of said banks to the credit of the various parties hereinafter named, the amounts set opposite their respective names; that for more than twenty years prior to the institution of this action none of said depositors have made any deposit to the credit of their respective accounts, or withdrawn any part thereof, or the, or any interest or dividends accruing thereon; that said moneys and accounts so deposited and all accruing interest and dividends thereon have remained unclaimed for more than twenty years after the same were so deposited or credited, and after the withdrawal of any part of the principal or interest or dividends, and said moneys and accounts, and each and all of them now are unclaimed; that the date of the last transaction in each of said accounts, whether by deposit or withdrawal of any portion thereof, or by withdrawal of any interest or dividends accruing thereon, is hereinafter set opposite the respective names of each of such persons herein named; that none of said depositors, nor any claimant of any of said de-
21 posits or accounts, or of the interest or dividends thereon, have filed any notice with such bank showing the present residence

of any of such depositors and none of said depositors are known to the president or managing officer of the bank in which such deposit was made to be now living; that the names of all of said persons, together with the dates of the last transaction in each case and the respective amounts now on deposit were all contained in the annual statement of said bank filed with the State Controller in January, 1917, as required by law, and the Attorney General of the State of California has been informed of all of the foregoing facts.

III.

That the names of each of the depositors in The Anglo & London Paris National Bank of San Francisco, a corporation, together with the amounts deposited to the credit of each and the date of the last transaction in each case are as follows:

(Here follows the name of each depositor in the Anglo & London Paris National Bank of San Francisco, a corporation, together with the amount deposited to the credit of each and the date of the last transaction in each case, such names being the names appearing in the list of the names of the defendants in the title of this complaint which appear between the words "The Anglo & London Paris National Bank of San Francisco, a corporation", and the words "The Bank of California National Association, a corporation".)

IV.

That the names of each of the depositors in The Bank of California National Association, a corporation, together with the amounts deposited to the credit of each, are as follows:

(Here follows the name of each depositor in The Bank of California National Association, a corporation, together with the amount deposited to the credit of each and the date of the last transaction in each case, such names being the names appearing in the list of names of the defendants in the title of this complaint which appear between the words "The Bank of California National Association, a corporation", and the words "The Crocker National Bank of San Francisco, a corporation".)

V.

That the names of each of the depositors in the Crocker National Bank of San Francisco, a corporation, together with the amounts deposited to the credit of each, and the date of the last transaction in each case, are as follows:

(Here follows the name of each depositor in the Crocker National Bank of San Francisco, a corporation, together with the amount deposited to the credit of each and the date of the last transaction in each case, such names being the names appearing in the list of names of the defendants in the title of this

complaint which appear between the words "The Crocker National Bank of San Francisco, a corporation" and the words "First National Bank of San Francisco, a corporation".)

VI.

That the names of each of the depositors in The First National Bank of San Francisco, a corporation, together with the amounts deposited to the credit of each, and the date of the last transaction in each case, are as follows:

(Here follows the name of each depositor in the First National Bank of San Francisco, a corporation, together with the amount deposited to the credit of each and the date of the last transaction in each case, such names being the names appearing in the list of names of the defendants in the title of this complaint which appear between the words "First National Bank of San Francisco, a corporation", and the words "First National Bank of San Jose, a corporation".)

VII.

That the name of the depositor in the First National Bank of San Jose, a corporation, together with the amount deposited to the
24 credit of said depositor, and the date of the last transaction, is as follows:

Name.	Amount.	Last transaction.
P. A. Campbell.....	$1,192.25	Nov. 10, 1880.

VIII.

That the names of the depositors in the San Bernardino National Bank, a corporation, together with the amount deposited to the credit of each depositor, are as follows:

(Here follows the name of each depositor in the San Bernardino National Bank, a corporation, together with the amount deposited to the credit of each and the date of the last transaction in each case, such names being the names appearing in the list of the names of the defendants in the title of this complaint which appear between the words "San Bernardino National Bank, a corporation", and the words "First National Bank of Santa Barbara, a corporation".)

IX.

That the names of the depositors in the First National Bank of Santa Barbara, a corporation, together with the amount deposited to the credit of such depositors, and the date of the last transaction in each case, are as follows:

(Here follows the name of each depositor in the First National Bank of Santa Barbara, a corporation, together with the
25 amount deposited to the credit of each and the date of the last transaction in each case, such names being the names appearing in the list of the names of the defendants in the title of this complaint which appear between the words "First National Bank of Santa Barbara, a corporation", and the words "John Doe".)

X.

That John Doe, Richard Roe, Isaac Hoe, George Goe, Mary Noe, First Doe, Second Doe, Third Doe, Fourth Doe and Fifth Doe, Sixth Doe, Seventh Doe, Eighth Doe, Ninth Doe, and Tenth Doe, are sued herein as fictitious persons and plaintiff prays that when the true names of said parties are known that it may have leave to amend this complaint by inserting the true names of such parties herein.

Wherefore plaintiff prays that, after a hearing had herein, it be determined by said Superior Court that all unclaimed moneys so deposited in said The Anglo & London Paris National Bank of San Francisco, The Crocker National Bank of San Francisco, The Bank of California National Association, First National Bank of San Francisco, First National Bank of San Jose, San Bernardino National Bank and First National Bank of Santa Barbara, as aforesaid, are and have been unclaimed as hereinbefore stated; and that the
26 Court render judgment in favor of plaintiff declaring that said moneys, together with the increase and proceeds thereof, up to the time of judgment, have escheated to the State and commanding said banks to forthwith deposit with the State Treasurer of the State of California all such moneys on deposit, together with said increase and proceeds, and for such other and further relief as may be meet in the premises.

U. S. WEBB,
Attorney General of the State of California;
JOHN T. NOURSE,
Deputy Attorney General,
Attorneys for Plaintiff.

(Endorsed:) Filed Nov. 9, 1917. E. F. Pfund, Clerk, by A. Greilich, Deputy.

Demurrer of First National Bank of San Jose to Complaint.

No. 22943, Dept. 2.

[Title of Court and Cause.]

And now comes the First National Bank of San Jose, one of the defendants above named, and demurs to the complaint of the said plaintiff upon the following grounds, namely:

I.

This Court has no jurisdiction of the subject of this action
27 for the following reasons, namely:

(*a*) The Matter of the regulation of bank deposits in National Banks of the United States is exclusively and only to be exercised by the United States of America, and cannot under any circumstances be exercised by any state within the United States.

(*b*) The United States by its congressional law has already regulated the matter of the deposits made or to be made in the National Banks of the United States, as far and to the extent that it has intended that the same should be regulated, and the State of California is and always has been without power or authority to in any way regulate such deposits, or to determine whether such deposits shall remain as deposits of the United States National Banks where they are deposited, either for twenty years, ten years or five years, or for any other length of time which any state might desire to fix and limit as to the time which such deposits should remain as deposits with and in said National Banks.

II.

Said complaint does not state facts sufficient to constitute a cause of action against this defendant.

III.

It appears that this defendant is a National Bank of the
28 United States of America, and it does not appear from said complaint that the State of California ever enacted any law which by its terms or otherwise purported or intended to authorize said state to claim any deposits in said National Bank by reason of any fact or facts alleged in said complaint.

IV.

If the State of California intends to claim that it is entitled in the way of escheat or otherwise to claim the custody or ownership of any deposit of this defendant, this defendant being a National Bank of the United States, as aforesaid, then such claim is illegal and contrary to the provisions of Chapter One of Title 62 of the Revised Statutes of the United States.

V.

If it is claimed by the State of California in this action that it is entitled to a judgment or decree for the custody or ownership of any of the deposits in the respective National Banks defendant in this action mentioned in said complaint, then said claim is invalid and

illegal in this, that Section 5214 of said Revised Statutes was enacted with the express intention that the United States should collect an annual revenue on all deposits in said National Bank without any limitation as to the age of such deposits, and that said section was not enacted with any intention that any state should at any time have the power or right to convert any of such deposits to its own use or to take away such deposits, or any of them, from National Banks and put the same on deposit with the Treasurer of such state and thereby deprive the United States from thereafter receiving any further revenue therefrom under the provisions of said Section 5214, or under any further or other law imposing taxes on such deposits payable to the United States

VI.

If it is claimed by the State of California in this action that it is entitled to a judgment or decree for the custody or ownership of any of the deposits in the respective National Banks defendant in this action mentioned in said complaint, then said claim is invalid and illegal for the further reason that if said state should succeed in taking away the deposits mentioned in said complaint from any of the National Banks mentioned in said complaint, then in case it ever should be necessary to use such deposits under the provisions of Section 5236 of said Revised Statutes of the United States for the purpose of paying any claims against said bank or banks, or for distributing the same, or any part thereof, to the shareholders of such association or such bank or banks in proportion to the stock by them respectively held, or to make or to use the same for the payment of any claimants of any of said bank or banks, or to distribute the same to the shareholders thereof in proportion to the stock by them respectively held under the provisions of Section 5191 of said Revised Statutes, then it would be impossible for such creditors or stockholders to receive or have the benefit of any of such deposits so taken from the said National Banks by said State of California.

Wherefore, this defendant prays that the plaintiffs take nothing against this defendant, and that this defendant have judgment for its costs.

LEIB & LEIB,
Attorneys for said Defendant,
The First National Bank of San Jose.

(Demurrer duly served by mail on attorneys for plaintiff on January 4th, 1919, as appears by affidavit attached thereto.)

Demurrer Endorsed: Filed Jan. 7, 1918. E. F. Pfund, Clerk, by A. Greilich, Deputy.

31 *Minute Order.*

No. 22943, Dept. 2.

May 13th, A. D. 1918.

Court met pursuant to Law, Hon. Peter J. Shields, Judge Superior Court Presiding.

[Title of Court and Cause.]

The Demurrers of Bank of California, Crocker National Bank, 1st National Bank of San Jose and 1st National Bank of Santa Barbara, corporations to the Complaint in the above entitled cause having been heretofore on May 6th, 1918 argued by respective Counsel and submitted to the Court and by the Court taken under advisement and now on this day the Court being fully advised. Orders that said Demurrers to the complaint be and each of them is hereby overruled and Counsel for the defendants are allowed ten days in which to Answer.

Answer of First National Bank of San Jose.

No. 22943, Dept. 2.

[Title of Court and Cause.]

Now comes the First National Bank of San Jose, one of the above named defendants in this action, and answers the complaint of the plaintiff in this action as follows, namely:

32 I.

Said defendant alleges that this defendant is and for over thirty-eight years last past has been a corporation, to wit: a National Bank of the United States, incorporated, existing and doing business under the laws of the United States of America as a National Bank, and particularly under the Revised Statutes of the United States, and that all the deposits ever received by said Bank, including the deposit mentioned in said complaint as having been received by it, were received by it as such National Bank, and were received and always held by it with all the rights to which it was entitled under and by virtue of the laws of the United States, and no deposit was ever in any way or to any extent received or held by it under or by reason of any law or laws of the State of California.

II.

Said defendant further alleges the money so deposited with the defendant, as alleged in said complaint, was deposited by it with this defendant on November 10th, 1880, and when so deposited it

thereby became the property of and a part of the assets of this defendant, and thereby became vested with the right to have and use the same as its own property and as a part of its own assets as provided by the laws of the United States, including the
33 right to make therefrom and from the proceeds of any investment or reinvestment thereof payment of the claims of its creditors who should present their claims against this defendant and have them allowed or adjudicated in their favor, as provided by the provisions of Sections 5220, 5221, 5234, 5235 and 5236 of the Revised Statutes of the United States, and should then have the right to distribute all of its remaining assets not used in satisfying such allowed and adjudicated claims to the then shareholders of this corporation in proportion to the stock of this corporation then respectively held by such shareholders.

III.

This defendant alleges that upon the making of said deposit with this defendant, the relation of creditor and debtor between such depositor and this defendant existed; that this defendant then and thereby became the owner of such deposited moneys as hereinbefore alleged, and at the same time this defendant then and thereby became indebted to said depositor for a sum of money equal in amount to the sum of money then so deposited; that said indebtedness existed in favor of said depositor and to his heirs, executors, administrators and assigns but this defendant denies that such indebtedness existed in favor of the plaintiff herein; and this defendant
34 denies that said plaintiff could transfer to itself the ownership of said indebtedness in the absence of any law of the United States permitting it so to do and said defendant denies that any law of the United States exists or ever existed which purports or purported to allow the State of California to transfer the ownership of such indebtedness or the ownership of such deposit to itself. On the contrary this defendant alleges that the provisions of Section 5135 of the Revised Statute of the United States expressly authorizes every National Bank to receive deposits, and this defendant alleges that thereby any National Bank receiving such deposit is made a debtor to the depositor in a sum equal to the amount of such deposit, and thereby is made liable to pay such indebtedness to such depositor, or to his heirs, executors, administrators or assigns whenever demanded by him or them so to do, and denies that any law of the United States provides either expressly or otherwise that a State can become, by its own legislation, the owner of such indebtedness, or entitled to a judgment in any Court that it has a right to collect such indebtedness, either for itself or for the purpose of protecting the interests of anyone else, or that a deposit can be changed from the custody of the United States to the custody of such State, either for the reason that, in the judgment of the legislature of such
35 State the proper authorities of the United States cannot, or will not, under the laws of the United States, properly pro-

tect all those who are or may be entitled to such protection, or for any other reason whatever.

This defendant denies that the State of California has the power to change the custody of said deposit from the custody of a National Bank of the United States to the State Treasurer of the State of California, and denies that there is any law of said State which purports to give such State such power.

IV.

This defendant denies that if any escheat of a deposit made in a National Bank of the United States can occur to or in favor of any sovereign state or soverign nation, it cannot occur to or in favor of any sovereign other than to the sovereign nation existing under the name of "The United States of America," which last named sovereign is the only sovereign which caused such deposit to exist, or which in any way caused its existence; and this defendant denies that escheat of such deposit is given to the sovereign existing under the name of "The State of California," and denies that such deposit was created or come into existence except solely and only by reason of the laws of the United States. And this defendant denies
36 that such deposit ever existed or ever came into existence either wholly or partially or at all by reason of any law or laws of the State of California, and denies that said State or its laws was ever in any way the source or the cause of or responsible for such deposit existing or being brought into being.

V.

This defendant denies that said deposit or the indebtedness arising therefrom could, or can or did escheat to the State of California by reason of any crime or wrong or default or thing alleged in the complaint herein, or at all.

Said defendant denies that at any time prior to August 10th, 1913, there was any law enacted by the legislature of the State of California requiring or even intimating that a depositor, or any assignee, heir, executor or administrator of a depositor, should change the amount of his or their deposit at least once within every twenty years, or that a claim for such deposit should be made at least once during such twenty years, or that a written notice of the present residence of said depositor should be filed with the bank at least once every twenty years, or that any of such things should be done at any time whatever.

VI.

Said defendant alleges that said legislature did not by any
37 act or acts under which this action was brought, nor by any other act passed by it since August 10th, 1913, concerning escheats, purport to make the same applicable to deposits made in National Banks.

VII.

This defendant alleges that if the act or acts of the legislature of the State of California under which this action is brought attempt to interfere with the laws of the United States concerning deposits in the National Banks of the United States, then such state laws are null and void, as to said National Banks.

VIII.

Said defendant alleges that if such act or acts of such legislature was intended to apply to National Banks of the United States, then such attempt to deprive this defendant of the custody of said deposit, or to deprive such defendant of any of its other rights to such deposits herein set forth, is an attempt to deprive said defendant of its property and property rights without due process of law, and contrary to the Fourteenth Amendment of the Constitution of the United States.

IX.

Said defendant alleges and claims that such act or acts of such legislature, if intended by such legislature to apply to said National Banks, are contrary to the provisions of Section 10 of Article
38 One of the Constitution of the United States, and are an attempt to impair the obligation of the said contract between the said defendant and the depositor who made such deposit, in this: The contract arising from such deposit was to the effect that said defendant should, on proper demand therefor, pay such depositor or his heirs, executors, administrators and assigns, an amount equal to the amount of said deposit, but that if the same was never so demanded, then said defendant should have the right to pay and should pay the same to the shareholders of the defendant upon the distribution of the assets remaining after all the claims made and allowed against defendant were paid upon the liquidation of this corporation under Chapter Four of Title Sixty Two of the Revised Statutes of the United States, whereas said acts of said legislature, if they are intended to apply to National Bank deposits, attempts to destroy such contract by legislating such deposit, or the money owing on account thereof, into the ownership of said State of California, and thereby destroy the right of said defendant to so distribute any part of such deposit to such shareholders upon the happening of the circumstances above stated.

X.

This defendant alleges that if the legislature of the State of California had the power or right to declare by a legislative act
39 that said deposit, or the money owing on account thereof, escheated to the said State, and had a right by such a legislative act to demand that this defendant pay the same to the State

Treasurer of the said State, then such legislature had the same right and power to have passed such act and to have made such demand for ten years and more before it did pass such act declaring such escheat and demanding such payment, and said defendant alleges that said plaintiff's right to bring this action is barred by Section 345 of the Code of Civil Procedure of California and by each of Sections 338, subdivision 1; 339, subdivision 1; and 343 of said Code.

Wherefore, this defendant, the First National Bank of San Jose, prays judgment herein that the plaintiff herein take nothing against this defendant in this action, and that this defendant have judgment for its costs against said plaintiff.

LEIB & LEIB,
Attorneys for Defendant,
the First National Bank of San Jose.

STATE OF CALIFORNIA,
County of Santa Clara:

W. S. Clayton, being first duly sworn, on his oath states:
40 That he is the President of the First National Bank of San Jose, one of the defendants in the above entitled action;

That he has heard read the foregoing Answer, and knows the contents thereof, and that the same is true of his own knowledge except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

W. S. CLAYTON.

Subscribed and sworn to before me this 21st day of May, A. D. 1918.

[Notarial Seal.] R. C. LEIB,
Notary Public in and for the County of
Santa Clara, State of California.

(Answer duly served by mail on attorneys for plaintiff on May 21st 1919, as appears by affidavit attached thereto.)

(Answer Endorsed:) Filed May 23, 1918. F. Gregory, clerk by A. Greilich, deputy.

Findings as to First National Bank of San Jose.

No. 22943, Dept. 2.

[Title of Court and Cause.]

This cause came on regularly for trial before the Court sitting without a jury, a jury having been duly waived, on the 19th
41 day of September, 1918. U. S. Webb, Attorney General of the State of California, represented by Frank L. Guerena, Deputy Attorney General, appeared as attorney for plaintiff, and S. F. Leib, Esq., appeared as attorney for the defendant, The First National Bank of San Jose, a corporation. Oral and documentary

evidence was introduced and the cause was argued and submitted to the Court for its decision. The Court, having duly considered the evidence, including the agreed statement of facts filed herein, the pleadings and the arguments, and being fully advised in the premises, now makes and files this its decision.

Findings of Fact.

The Court finds the facts herein to be as follows:

I.

That the defendant, The First National Bank of San Jose, is and at all times herein mentioned was a corporation doing a banking business in the State of California.

II.

That for more than twenty years prior to the institution of this action there was on deposit with the said defendant bank to the credit of P. A. Campbell the sum of $1,192.25; that for more than twenty years prior to the institution of this action the said
42 P. A. Campbell has not made any deposit to the credit of said account or withdrawn any part thereof or the or any interest or dividends accruing thereon; that the said money and account so deposited and all accruing interest and dividends thereon have remained unclaimed for more than twenty years after the same were so deposited or credited, and after the withdrawal of any part of the principal or interest or dividends, and said moneys and account now are unclaimed; that the date of the last transaction in connection with the said deposit of the said P. A. Campbell, whether by deposit or withdrawal of any portion of such account or by withdrawal of any interest or dividends accruing thereon, was on the 10th day of November, 1880; that neither the said depositor nor any claimant of the said deposit or account, or of any interest or dividends thereon, has filed any notice with the said defendant bank showing the present residence of the said P. A. Campbell, and the said P. A. Campbell is not known to the president or to the managing officers of the said defendant bank to be now living; that the name of the said depositor, P. A. Campbell, together with the date of the last transaction in connection with his said deposit or account, and the amount now on deposit in the said defendant bank to the credit of the said depositor were all contained in the annual statement of the
43 said defendant bank filed with the State Controller of the State of California in January, 1917, as required by law, and the Attorney General of the State of California has been informed of all of the foregoing facts.

III.

That in this action summons was issued and notice to claimants was given as required by Section 1273 of the Code of Civil Procedure

and by Section 15 of the Bank Act of the State of California; that in this action summons, copy of complaint and notice to claimants were duly served upon the said defendant bank, and in this action the summons and notice to claimants were published as required by the said sections.

IV.

Said defendant is and for over thirty-eight years last past has been a corporation, to-wit: a National Bank of the United States, incorporated, existing and doing business under the laws of the United States of America as a National Bank and particularly under the Revised Statutes of the United States, and that all the deposits ever received by said Bank, to-wit: by the said The First National Bank of San Jose, including the deposit mentioned in said complaint as having been received by it, were received by it as such National Bank, and were received by it with all the rights to which it
44 was entitled under and by virtue of the laws of the United States, and no deposit was ever in any way or to any extent otherwise received; and said Bank claims, and during its entire existence has always claimed, to hold every deposit ever made with it, including said deposit alleged in said complaint to have been made with said The First National Bank of San Jose, exclusively under the laws of the United States and in no way under any law or laws of the State of California.

V.

That the money so deposited with the defendant Bank as alleged in said complaint was so deposited with said Bank on November 10, 1880, and was deposited with said Bank as a Credit to the depositor making the same on the books of said Bank and in the same form and way as all other deposits which were subject to being checked out by depositors making the same; and such deposit was then and thereafter subject to be checked out by said depositor making such deposit. And said defendant Bank, The First National Bank of San Jose, now claims and has at all times mentioned herein claimed that when such deposit was made with the said The First National Bank of San Jose, said Bank thereby became the owner of the money so deposited and that said defendant then and thereby became
45 indebted to said depositor for a sum of money equal in amount to the sum of money so deposited, and that said indebtedness existed in favor of said depositor and his heirs, executors, administrators and assigns. And said deposit was made in the usual manner of deposits made in bank subject to be checked out in the usual manner, and was so entered upon the books of said Bank and has ever since remained and yet remains in such form.

VI.

That the said deposit of the said P. A. Campbell was created and came into existence with the said defendant bank solely by reason

of the laws of the United States, under which the said bank was created.

VII.

That by written stipulation on file herein, each and every law of the United States and of the State of California throwing any light upon any question involved in this action, or which is claimed by either party to throw any light thereon, was deemed to be in evidence and before this Court for the full consideration of this Court the same as though such laws were at length copied in such stipulation.

That the attorneys for The First National Bank of San Jose called the attention of this Court to Title XII of the Revised Statutes of the United States concerning National Banks, and relied
46 upon the same, and especially Sections 5136, 5191, 5202, 5214, 5215, 5220, 5221, 5234, 5235, 5236 and also the Federal Reserve Act of the United States, and especially Section 9801 of the Compiled Statutes of the United States.

Said attorneys, on behalf of said First National Bank of San Jose, claimed and argued to this Court that by reason of such status of the United States, Section 1273 of the Code of Civil Procedure of the State of California, and also Section 15 of what is known as the "Bank Act" of the State of California, found in Statutes of California of 1915, were and are invalid and void so far as any deposit in such National Banks is concerned.

Conclusions of Law.

From the foregoing facts the Court concludes that the said deposit of the said P. A. Campbell has escheated to the State of California, plaintiff herein, and the defendant, The First National Bank of San Jose, a corporation, must forthwith deposit with the said Treasurer of the State of California the amount of the said deposit in the sum of eleven hundred ninety-two and 25/100 dollars ($1,192.25).

Let judgment be entered accordingly.

Dated this 2nd day of July, 1919.

PETER J. SHIELDS,
Judge of the Superior Court.

47 (Endorsed:) Filed Jul. 2, 1919. Harry W. Hall, Clerk, by B. H. Gallup, Deputy.

Judgment as to First National Bank of San Jose.

No. 22943, Dept. 2.

[Title of Court and Cause.]

This cause came on regularly for trial before the Court sitting without a jury, a jury having been duly waived, on the 19th day of September, 1918. U. S. Webb, Attorney General of the State of California, represented by Frank L. Guerena, Deputy Attorney General, appeared as attorney for plaintiff, and S. F. Leib, Esq., appeared as attorney for the defendant, The First National Bank of San Jose, a corporation. Oral and documentary evidence was introduced and the cause was argued and submitted to the Court for its decision.

The Court having duly considered the evidence, including the agreed Statement of Facts filed herein, the Pleadings and the arguments, and being fully advised in the premises, having thereupon found that plaintiff should take judgment against the defendant, The First National Bank of San Jose, a corporation, as prayed for in plaintiff's complaint on file herein;

And it appearing that the defendant, P. A. Campbell, has
48 failed, after being duly served with process by plaintiff, to appear in this action;

Now therefore, it is hereby ordered and adjudged, that the money in the sum of One Thousand, One Hundred and Ninety-two and 25/100 ($1,192.25) Dollars on deposit with the defendant, The First National Bank of San Jose, a corporation, to the credit of the defendant, P. A. Campbell, has escheated to the State of California, plaintiff herein, and the said defendant, The First National Bank of San Jose, a corporation, is hereby commanded to forthwith deposit the said money with the State Treasurer of the State of California; and the State of California, plaintiff herein, is entitled to its costs of suit herein in the sum of — Dollars.

Judgment rendered this 2nd day of July, 1919.

PETER J. SHIELDS,
Judge of the Superior Court.

Attest:
HARRY W. HALL,
Clerk,
By B. H. GALLUP,
Deputy Clerk.

49 (Endorsed:) Filed Jul. 2, 1919. Harry W. Hall, Clerk, by B. H. Gallup, Deputy. Suit No. 22943. Decree No. 13473. Decree entered July 3, 1919 at 1.00 o'clock P. M.

Notice of Appeal of First National Bank of San Jose.

No. 22943, Dept. 2.

[Title of Court and Cause.]

To the clerk of said Superior Court and to the above-named plaintiff, the State of California, and to U. S. Webb, Attorney General of the State of California, and Frank L. Guerena, Deputy Attorney General of the State of California, the attorneys for said State of California:

You will please take notice that The First National Bank of San Jose, one of the defendants in the above entitled action, hereby appeals to the District Court of Appeal of the Third Appellate District of the State of California from all and every part of the judgment made by said Superior Court in the above entitled action against said The First National Bank of San Jose, said judgment being dated and filed July 2nd, 1919, and entered July 3rd, 1919.

50 Dated this 30th day of August, 1919.

LEIB & LEIB,
Attorneys for said Defendant, The First National Bank of San Jose.

Received on this 30th day of August, 1919, from the First National Bank of San Jose a copy of its foregoing notice of appeal from the judgment made and entered against it by the Superior Court of the State of California in and for the County of Sacramento in the action of the State of California, plaintiff, vs. The Anglo & London Paris National Bank of San Francisco, et al., defendants; and the plaintiff in said action hereby stipulates that the giving or filing of an undertaking on appeal required by the provisions of Section 940 of the Code of Civil Procedure of the State of California in order to make such appeal effectual, and also that the making of a deposit, mentioned in Section 941 of said Code, and also that the giving or filing of the undertaking on appeal required by the provisions of Section 942 of said Code in order to stay the execution of said judgment entered in said action against the said defendant and appellant, The First National Bank of San Jose, and also that the making of a deposit mentioned in Section 948 of said Code in order to stay the execution of such judgment, be, and that each and all and every of said requirements mentioned in said sections or in either of

51 them are hereby waived, it being hereby stipulated that no bond need be made or filed or deposit be made in order to make such appeal effectual or to stay the execution of said judgment during the pendency of such appeal.

Dated August 30th, 1919.

U. S. WEBB,
Attorney General of the State of California;
FRANK L. GUERENA,
Deputy Attorney General of the State of California,
Attorneys for Plaintiff.

(Endorsed:) Filed Aug. 30, 1919. Harry W. Hall, Clerk, by M. L. Winkelman, Deputy.

52 In the District Court of Appeal of the State of California, Third Appellate District.

STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

ANGLO & LONDON PARIS NATIONAL BANK OF SAN FRANCISCO et al., Defendants; The First National Bank of San Jose, Defendant and Appellant.

Stipulation as to Transcript on Appeal of the First National Bank of San Jose.

It is hereby stipulated by the appellant in the appeal of the First National Bank of San Jose in the above entitled action and by the above named respondent that the foregoing transcript on appeal is correct, and that it contains true copies of the original papers on file and of record in the office of the Clerk of the Superior Court of the County of Sacramento, State of California, in the above entitled action.

It is also stipulated that the giving of bonds upon such
53 appeal was duly waived by the respondent.

It is also further stipulated that the names of the depositors appearing in the title of the complaint as printed in the said transcript need not be again printed in the allegations of the complaint other than by reference thereto as appears in the foregoing transcript.

It is further stipulated that in case any error or omission be found to exist in said printed transcript the same may be corrected at any time upon suggestion to the Court of such error or omission.

Dated: September 25th, 1919.

U. S. WEBB,
Attorney General.
FRANK L. GUERENA,
Deputy Attorney General.
LEIB & LEIB,
Attorneys for Defendants and Appellant, The First National —.

54 Due service and receipt of a copy of the within is hereby admitted this 7th day of October, 1919.

U. S. WEBB,
Attorney General,
FRANK L. GUERENA,
Deputy Attorney General,
Attorneys for Respondent.

55 In the Supreme Court of the State of California.

Civil. S. F. No. —; Sac. 3215.

STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

ANGLO & LONDON PARIS NATIONAL BANK OF SAN FRANCISCO et al., Defendants; The First National Bank of San Jose, Defendant and Appellant.

Petition of the First National Bank of San Jose, a Defendant and Appellant, for Hearing in the Supreme Court After Final Decision by the District Court of Appeal, Third Appellate District, and Numbered Therein No. 2088.

Leib & Leib, Attorneys for Appellant.

Filed January 25, 1921.
B. GRANT TAYLOR,
Clerk,
HASKELL,
Deputy Clerk.

56 *Note.*

We here insert the places where will be found our quotations of the different portions of the U. S. Revised Statutes and also where will be found our reference to authorities.

	Opening brief.		Appellant's reply brief.	
	Page.		Page.	
U. S. Revised Statutes, section.	In full.	In part.	In full.	In part.
1890	..	17	..	..
3492	..	18	..	..
5136	..	20	..	13
5137	..	20	..	..
5141	..	..	..	14
5191	..	..	15	..
5202	..	22	..	..
5214	..	23	17	..
5215	..	24	18	..
5220	27	..	9	..
5221	27	..	9	11
5234	..	..	9	..
5235	27	25	10	..
5236	27	25	10	..

Authorities cited.	Opening brief. Page.	Appellant's reply brief. Page.
Burton v. U. S.	9	...
California v. Pac. R. R. Co.	34	...
Connolly v. Union Sewer Pipe Co.	37–38	...
Cook Co. National Bank v. U. S.	46–47	...
Davis v. Elmira Savings Bank	38–40, 47	...
Easton v. State of Iowa	38, 40–46, 50	...
Farmers National Bank v. Dearing	37–38	...
Gonyar v. Williams	30	...
New York etc. v. Massey	9, 48	...
Newmark v. Merchants National Bank		
Osborn v. U. S. Bank	52–57	...
Plumas Co. Bank v. Bank of Rideout	30	...
Provident Institution for Savings v. Malone	12	...
San Benito Co. v. S. P. R. R. Co.	34	...
Smith's Store v. First National Bank	9	...
State v. First National Bank of Portland	..	2, 7
State v. Security Savings Bank	..	2

57 In the Supreme Court of the State of California, District Court of Appeal, Third Appellate District.

No. 2028.

STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

ANGLO & LONDON PARIS NATIONAL BANK OF SAN FRANCISCO et al. Defendants, The First National Bank of San Jose, Defendant and Appellant.

Petition for Hearing and Determination of This Cause in the Supreme Court by The First National Bank of San Jose, a Defendant and Appellant, After Final Decision by District Court of Appeal, State of California, Third Appellate District.

To the Honorable F. M. Angellotti, Chief Justic, and the Associate Justices of the Supreme Court of the State of California:

58 This cause was brought in the Superior Court of the State of California in and for the County of Sacramento against several National Banks, one of which was The First National Bank of San Jose. The answers that were filed by the different banks were each filed separately. In the trial against the defendant, The First National Bank of San Jose, judgment was ordered for the plaintiff and findings were filed and judgment was entered accordingly. From the judgment an appeal was taken to the Dis-

trict Court of Appeal, Third Appellate District, by The First National Bank of San Jose, against whom said judgment was entered. After the same was argued therein, such District Court of Appeal rendered judgment affirming the judgment of the Superior Court against said The First National Bank of San Jose, which judgment was rendered and entered on December 17th, 1920.

A copy of the opinion filed with the District Court in rendering its judgment is hereunto annexed.

The State of California in 1915 enacted a new section of the Code of Civil Procedure, towit, Section 1273 of such code, and at the same session of the Legislature amended what is known as "The Bank Act," by enacting Section 15 thereof so as to be substantially identical with said Section 1273 of the Code of Civil Procedure.

59 Section 1273 reads as follows:

"All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest, and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, escheat to the state. Whenever the attorney-general shall be informed of such deposits, he shall commence an action or actions in the name of the state of California, in the superior court for the county of Sacramento, in which shall be joined as parties the bank or banks in which the moneys are deposited and the names of all such depositors. All or any number of depositors or banks may be included in one action. Service of process in such action or actions shall be made by delivery of a copy of the complaint and summons to the president, cashier or managing officer of each defendant bank, and by publication of a copy of such summons in a newspaper of general circulation published in said county for a period of four weeks. Upon the trial the court must hear all parties who have appeared therein and if it be determined that the moneys deposited in any defendant bank or banks are unclaimed as hereinabove
60 stated, then the court must render judgment in favor of the state declaring that said moneys have escheated to the state and commanding said bank or banks to forthwith deposit all such moneys with the state treasurer, to be received, invested, accounted for and paid out in the same manner and by the same officers as is provided in the case of other escheated property."

Section 15 of the Bank Act is to all intent and purposes, identical with Section 1273, and the new matter in both of them is the same.

The chief defense of The First National Bank of San Jose in this action has been from the start, and still is, that the new provisions in Section 1273 of the Code of Civil Procedure of the State of California, and the new provisions in Section 15 of the Bank Act

of the State of California, both sections being passed in the year 1915, are repugnant to the laws of the United States, and especially are they repugnant to the laws of the United States with reference to the rights of National Banks which the said banks have and are entitled to have under and by reason of National Bank laws of the United States.

First.

As will be seen, those sections attempt to escheat to the State of California all deposits made in said National Banks where
61 such deposits have not been changed for the period of 20 years; and this we claim is contrary to the National Bank laws of the United States and is a violation of the rights thereto of said National Banks.

That we are correct in our claim that such laws do violate and conflict with the National Bank laws of the United States will appear in the subsequent subdivision of this brief in discussing that matter.

Second.

Such deposits upon being made became the property of National Banks. The money deposited, became by reason of such deposit, the property of the bank. The bank by reason of such deposit being made, became a debtor in the amount of such deposit to the party making such deposit. This is conceded by both the District Court and by Counsel on the other side.

Third.

This being so, the deposits themselves being the property of the banks, are kept constantly loaned out the same as any of the other deposits, irrespective of whether they are or are not what is termed by the District Court as "inactive deposits."

The debt which the bank owes to the man who made the deposit may be inactive in not being increased or diminished by the creditor; but it is a misnomer or misconception to say that because
62 the creditor does not increase or diminish his credits that thereby the public interests are being nullified and is absolutely without foundation. As long as the bank is loaning those deposits, irrespective of whether the creditor increases the amount of his credit or diminishes the same, such continuous loaning contributes to the public prosperity, to precisely the same extent, whether the depositor in the meantime does or does not change the amount of the bank's indebtedness to him.

What makes public prosperity so far as loaning money is concerned?

It is loaning money to those who are engaged in industries.

Suppose a deposit is made in a bank of a million dollars. The money is loaned by the bank for the purpose of aiding industrial pursuits. The borrowers thereof when they have made enough

profits in their industrial pursuits and no longer need the aid of this money, pay back the loan. The bank then reloans the same money to others engaged in industrial pursuits and those borrowers pay back their loans when they have made money enough so that they can carry on their industrial pursuits without need of borrowed money.

And so it continues.

That deposit made by such depositor is working for the
63 public good and public prosperity all the time even though no check is ever drawn and no further deposit is ever made.

We submit that it is unfounded to say that such deposit is not doing just as much good as it would do if the original depositor was himself drawing checks against what was owing him by the bank or by making further deposits. Therefore to say that a State has a right to escheat the deposit because the man who made it does not choose to change the amount from time to time which the bank owes him is unfounded. Whether he does or does not change the amount of the indebtedness owing him by the bank has nothing to do with "public welfare," and the right of the State to escheat, or rather the right to confiscate the bank's money, cannot be based upon the claim that the "public welfare" has suffered because the creditor did not make another deposit. The money the bank owned by reason of such deposit was as we said still working It might be different if the bank sealed it up in a cement pit where no access could be had to it and where it could not be loaned and handed out to borrowers, but such is in no wise the case

When, therefore, the District Court of Appeal places its
64 ground for justification for the State to escheat or confiscate the amount owing to the depositor by using the expression that "It is competent for the Legislature to determine that it is against the public welfare for property to remain unclaimed and unproductive for years, and that if after a reasonable period it is not claimed, that fact shall justify the State in taking possession of it and even appropriate it to the service of the people generally. There would seem to be no ground for controversy upon this point and we may pass it without comment."

It will be noticed that the Court does not draw the distinction between claiming or not claiming that the payment of the indebtedness is or is not for the "public welfare" and the other proposition, viz., that the money itself, being constantly loaned by the bank, (which owns it), to those who, therewith carry on productive industries, is or is not for the "public welfare."

Fourth.

The first four cases cited in this connection by the State do not bear out or prove the contention of the plaintiff. They are not dealing with the same matter at all. In each of those cases the question was whether a State which passed a law regulating State Banks had

a right to do so when those very banks were formed under the laws of that very State.

65 The instant case is where a State attempts, not to regulate or change the rights of its own banks, formed under its own laws, but is where a state attempts to regulate, and even attempts to annul the National Bank laws, and to destroy the rights which National Banks have under those laws; and that, too, where those rights and those National Bank laws had been in force and acted upon in every particular, (including the distribution of uncalled for deposits to the shareholders), for over half a century before the State attempted to ignore or deny those laws or the rights of the National Banks thereunder.

Only one of those cases was decided by the Supreme Court of the United States; and even in that case the United States Supreme Court would have decided otherwise had the State law contained in the state bank charter the language which is inserted and is a part of the express provisions of the National Bank law, as we have pointed out in our opening brief filed in the District Court of Appeal at pages 11 to 14 and which we earnestly urge this Court to read.

What those four decisions are or what any one of them decides what a State may do to a State Bank formed under those very State laws, is a matter which is not necessary to be argued in this

66 case; although we may state here that we have grave doubts whether the State could recover under said sections 1273 and 15 even if the defendant was a State bank instead of being what it is, to wit: a National bank.

Fifth.

We will now point out wherein Section 1273 of the Code of Civil Procedure and Section 15 of the Bank Act would, if enforced, create loss and damage not only to the National Banks themselves, but to the United States Government as well.

Sixth.

Section 5136 of the United States Revised Statutes expressly gave the power to National Banks to receive deposits, and in the same subdivision of that section it further provides that the banks also are given the power to loan money.

These two rights it designates as being "incidental" powers "which are necessary to carry on the business of banking." There is no limit whatever placed on National Banks as to the length of time for which the money they receive on deposits, (and which thereby becomes their own money), may be loaned and reloaned, except in one particular and that is that when a bank goes out of business and liquidates its affairs the bank shall publish due notice that

67 everyone who has or claims to have any claim against the bank, shall present the same to the bank for payment and the same shall then be either allowed or disallowed and those that are disallowed can be litigated as to their validity, and the statute then

provides that all the assets of the bank shall be turned into money and its debts which have been "presented" and "allowed" or which have been proved in such litigation to be valid, shall be paid, and that if after that is done there still be a remainder of assets that the same shall be divided among the shareholders of the bank in proportion to the amount of stock which each shareholder owns therein. This requires, of course, the conversion of all outstanding notes to be immediately converted into cash, either by collection or sale thereof.

It will be noted that these statutes do not authorize the payment of any claim that is not "presented", nor even if presented unless the same has been approved. This was a direct provision as to how the assets of the bank should be distributed when it goes out of business. If a party holding a claim did not present it, and it was not presented by either himself or his legal representative, then it would be used to pay the bank's debts as far as necessary, and if there was any assets still left then those remaining assets should be distributed to the then shareholders pro rata.

68 This was a provision in the nature of a tontine and is precisely what was referred to in the first of those four cases cited by the District Court of Appeal in its opinion, towit: Provident Institution for Saving vs. Malone, 221 U. S. 660, which case virtually states that where such a provision is in any bank charter, it shall prevail and cannot be meddled with or diminished by subsequent legislation; and especially would this be true if the bank be a National Bank of the United States.

This matter is fully discussed in our opening brief at pages 12 to 14, to which we will refer later and which we ask the Court to carefully read, as that one case alone is sufficient to dispose of this case in favor of the defendant.

We may add at this point that these laws were in force 51 years before California chose to pass Section 1273 and Section 15 of the Bank Act, and they were strictly observed during all those 51 years, and hence this "tontine" principle was observed and enforced in every single case where a National Bank has gone out of existence since the enactment of the National Bank laws.

The Supreme Court of the United States in its decision rendered by Chief Justice Marshall, to which we will refer to later, expressly held (and as to that matter put his whole decision on that

69 ground), that it was absolutely necessary that this operation of United States Banks be allowed to be sufficiently profitable to induce National Banks to be formed and operated as otherwise the United States would have no banks to aid it in its finances.

Seventh.

Section 5202 of the Revised Statutes expressly provides that a National Bank is authorized to borrow money in an amount not only equal to its capital stock but also to borrow an additional amount equal to moneys deposited with such bank.

That section which was passed 51 years before the passage of said

sections 1273 of the Code of Civil Procedure and 15 of the Bank Act, meant just what is said. It necessarily included all of its existing deposits. A deposit is a deposit whether it was made yesterday or at any prior time. It included those that had been undisturbed as well as those that had been changed for a greater amount or less amount. If those deposits could be diminished by the State legislating the same into its own coffers, then it would be defeating the borrowing ability of the National Bank by just that amount of such confiscation. That would be violating the express provision of the Federal law which expressly gives the right to the National Bank to
borrow to the full extent of every one of its depositors, and
70 the State cannot deprive the National Bank of that right,
either wholly or in part, no difference how small that part may be, as we will show later.

Eighth.

Section 5214 of the Revised Statutes was passed by Congress on the theory that it (the United States itself), should receive as a duty or tax upon all the deposits at the rate of ½ of 1% per year. If the deposits which had not been changed in amount were confiscated by the State to the extent of ½ of 1% thereof the revenue which the United States would receive would be lost.

Is it possible—can it be conceived—that the State can thus diminish the revenue of the United States? Can it be imagined that Congress, who is levying a duty or tax upon these undisturbed deposits, (as well as upon any other deposits), for its own benefit, could be made to lose a part of such duty or tax which under its own laws it had provided should be paid to it?

It may be urged that such deposits are small compared to the balance of the deposits. That is a question which cannot control the law of the case. Whether the invalidity is great or little, cuts no figure as we will show later on.

Ninth.

71 The very next section of the revised statutes, (Section 5215), expressly provides that the National Bank shall on the first day of each January and the first day of each July make a return to the United States "of the average amount of its deposits". This return is to be made under oath. If the official making such return should omit therefrom all deposits that were unchanged deposits, would he not be guilty of perjury in swearing that he had made a return of all the bank's deposits?

Tenth.

We feel in pursuing this petition that further arguments would unduly burden the Court. We do wish, however, to refer to the authorities bearing upon our rights in this matter, especially those bearing upon what has been said by the United States Supreme

Court in various cases and which we think answer any claim which has been or can be made contrary thereto.

The places where such citations and the quotations therefrom will be found set forth in the note immediately preceding and facing the first page of this Petition.

Eleventh.

As to the point as to whether the State can interfere with anything that is not a matter directly provided for in so many words by the United States statutes, we quote as follows:

72 "Another established doctrine of this court is, that where the power of Congress to regulate is exclusive, the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions; and any regulation of the subject by the states, except in matters of local concern only, as hereafter mentioned, is repugnant to such freedom. This was held by Mr. Justice Johnson in Gibbons v. Ogden, 9 Wheat. 1, 222, by Mr. Justice Grier in the Passenger Cases, 7 How. 283, 462, and has been affirmed in subsequent cases. State Freight Tax Cases, 15 Wall. 232, 279; Railroad Co. v. Husen, 95 U. S. 465, 469; Welton v. Missouri, 91 U. S. 275, 282; Mobile v. Kimball, 102 U. S. 691, 697; Brown v. Houston, 114 U. S. 622, 631; Walling v. Michigan, 116 U. S. 446, 455; Pickard v. Pullman Southern Car Co., 117 U. S. 34; Wabash, etc. Railway Co. v. Illinois, 118 U. S. 557."

Robbins v. Shelby Taxing District, 120 U. S. 489, 493.

"National banks are instrumentalities of the federal government, created for a public purpose, and, as such, necessarily subject to the paramount authority of the United States. It follows that an attempt by a state to define their duties, or control the conduct of their affairs, is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiency of those agencies of the federal government to dis-
73 charge the duties for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court.

* * * * * * *

"Nothing, of course, in this opinion is intended to deny the operation of general and undiscriminating state laws on the contracts of national banks so long as such laws do not conflict with the letter or the general objects and purposes of congressional legislation. Much was said in argument as to the public policy embodied in the law of the State of New York, and the wisdom of upholding it. Our function is judicial and not legislative. Did we, however, consider motives of public policy, we should not be unmindful of the wise safeguard in favor of all the people of the United States resulting from the provision which secures to everyone dealing with a national

bank a ratable distribution of the assets thereof, thereby stimulating confidence and uniformity of treatment."

Davis v. Elmira Savings Bank, 16 Sup. Ct. Rep. 502, 503, 504, 506.

"We think that this view of the subject is not based upon a correct conception of the Federal legislation creating and regulating National Banks. That legislation has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the states. Having due regard
74 to the national character and purposes of that system, we cannot concur in the suggestions that national banks, in respect to the powers conferred upon them, are to be viewed as solely organized and operated for private gain. The principles enunciated in M'Cullough v. Maryland, 4 Wheat. 425, 4 L. Ed. 606, and in Osborn v. Bank of United States, 9 Wheat. 738, 6 L. Ed. 204, though expressed in respect to banks incorporated directly by acts of Congress, are yet applicable to the later and present system of national banks.

"In the latter case it was said by Chief Justice Marshall:

" 'The bank is not considered as a private corporation whose principal object is individual trade and individual profit, but as a public corporation created for public and national purposes. That the mere business of banking is, in its own nature, a private business, and may be carried on by individuals or companies having no politician connection with the government, is admitted but the bank is not such an individual or company. It was not created for its own sake or for private purposes. It has never been supposed that Congress could create such a corporation. The whole opinion of the court in the case of M'Cullough v. Maryland is founded on, and sustained by, the idea that the bank is an instrument which is "necessary and proper for carrying into effect the powers vested in the government of the United States.'

"A similar view of the nature of banks organized under
75 the national bank laws has been frequently expressed by this court. Thus, in Farmers' & M. Nat. Bank v. Dearing, 91 U. S. 29, L. ed. 196, it was said:

" 'National banks organized under the act are instruments designed to be used to aid the Government in the administration of an important branch of the public service. They are means appropriate to that end.'

"Such being the nature of these national institutions, it must be obvious that their operations cannot be limited or controlled by state legislation, and the supreme court of Iowa was in error when it held that national banks are organized and their business prosecuted for private gain, and that there is no reason why the officers of such banks should be exempt from the penalties prescribed for fraudulent banking. Nor is it altogether true, as asserted by that court, that there is no act of Congress prohibiting the receipt of deposits by national banks or their officers when a bank is insolvent.

It is true that there is no express prohibition contained in the Federal statutes, but there are apt provisions, sanctioned by severe penalties, which are intended to protect the depositors and other creditors of national banks from fraudulent banking. It is not necessary to quote at length those provisions, but it will be sufficient to say that banks organized under the national bank act are authorized to make contracts, to prescribe, by its board of directors, by-laws regulating the manner in which their general business shall
76 be conducted, and the privileges granted by law exercised and enjoyed; to exercise by its board of directors, or duly authorized officers, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes and drafts, bills of exchange; by receiving deposits; by buying and selling exchange; by loaning money on personal security * * * to report to the Treasurer of the United States, twice each year, the average amount of its deposits, and to pay to said Treasurer each half year a tax upon such deposits. * * *

"It thus appears that Congress has provided a symmetrical and complete scheme for the banks to be organized under the provisions of the statute.

"It is argued by the learned Attorney General on behalf of the state of Iowa that 'the effect of the statute of Iowa is to require of the officers of all banks within the state a higher degree of diligence in the discharge of their duties. It gives to the general public greater confidence in the stability and solvency of national banks, and in the honesty and integrity of their managing officers. It enables them better to accomplish the purposes and designs of the general governments, and is an aid, rather than impediment, to their utility and efficiency as agents and instrumentalities of the United States.'

"But we are unable to perceive that Congress intended to leave the field open for the states to attempt to promote the welfare and stability of national banks by direct legislation. If they had
77 such power it would have to be exercised and limited by their own discretion, and confusion would necessarily result from control possessed and exercised by two independent authorities. * * *

"In Allen v. Carter, 119 Pa. 192, 13 Atl. 70, the question was whether a state law, which forbade 'any cashier of any bank from engaging directly or indirectly, in the purchase or sale of stock, or in any other profession, occupation, or calling other than his duty as cashier,' and which declared the same to be a misdemeanor, was applicable to the cashier of a national bank, and it was held that it was not so applicable, the court saying among other things:

"'The national banking act and its supplements create a complete system for the government of those institutions. Conceding the power of Congress to create this system, I am unable to see how it can be regulated or interfered with by state legislation. The act of 1860, if applied to national banks, imposes a disqualification upon cashiers of such institutions where none has been imposed by

act of Congress. If the state may impose one qualification upon the cashiers, why not another? If upon the cashier, why not upon the president or other officer? Nay, further, suppose the legislation should declare that no person should be a bank director unless he has arrived at fifty years of age, or should be the owner of one hundred shares of stock, could we apply such an act to National banks? If so, such institutions would have a precarious
78 existence. They would be liable to be interfered with at every step, and it might not be long before the whole national banking system would be found to be thrown aside as so much worthless lumber. * * *

"A leading case, in which this court had occasion to consider the limitation of legislation by a state affecting a subject within the scope of action by Congress, is that of Prigg v. Pennsylvania, 16 Pet. 539, 10 L. ed. 1060, from which we quote the following observation:

" 'If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner and in a certain form, it cannot be that the state legislatures have a right to interfere, and, as it were, by way of complement to the legislation to Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject-matter. Its silence as to what it does not do, is expressive of what its intention is, as the direct provisions made by it.'

"On the immediate subject of control over national banks, it was said, in Farmers' & M. Nat. Bank v. Dearing, 91 U. S. 29, 23 L. ed. 196:

" 'The states can exercise no control over them (national banks) nor in anywise affect their operation, except in so far as Congress
79 may see proper to permit. Any thing beyond this is "an abuse, because it is the usurpation of power which a single state cannot give. * * *" The states have no power, by taxation or otherwise, to * * * burden, or in any manner control, the operation of constitutional laws enacted by Congress to carry into execution the powers vested in the general government. * * *

"Our conclusions, upon principle and authority, are that Congress, having power to create a system of national banks is the judge to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations; that Congress has directly dealt with the subject of insolvency of such banks by the Comptroller of the Currency, who are authorized to suspend the operations of the banks and appoint receivers thereof when they become insolvent, or when they fail to make good any impairment of capital; that full and adequate provisions have been made for the protection of creditors of such insti-

tutions by requiring frequent reports to be made of their condition; and by the power of visitation by Federal officers; that it is not competent for state legislatures to interfere, whether with hostile or friendly intentions, with national banks or their officers in the exercise of the powers bestowed upon them by the general government. * * *

"Undoubtedly a state has the legitimate power to define and punish crimes by general laws applicable to all persons within
80 its jurisdiction. So, likewise, it may declare, by special laws, certain acts to be criminal offenses when committed by officers or agents of its own banks and institutions. But it is without lawful power to make such special laws applicable to banks organized and operating under the laws of the United States.

"It was by failing to observe the distinction between the two classes of cases that we think, the courts below fell into error."

Easton v. State of Iowa, 23 Sup. Ct. Rep. 288, 290-294.

The "last word" of the United States on this subject was on Nov. 10th, 1919, and is as follows:

"But when the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements than they can annul them. Southern Ry. Co. v. Railroad Commission of Indiana, 236 U. S. 439, 466, 35 Sup. Ct. 304, 59 L. Ed. 661; Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co., 237 U. S. 597, 604, 35 Sup. Ct. 715, 59 L. Ed. 1137, Ann. Cas. 1916D, 333; New York Central R. R. Co. v. Winfield, 244 U. S. 147, 37 Sup. Ct. 546, 57 L. Ed. 1045, L. R. A. 1918C, 439, Ann. Cas. 1917D, 1139."

Penn. R. Co. v. Public Service Commission, 40 Sup. Ct. 36, 37.

81 Twelfth.

Section 1273 is a clear case of the State attempting to regulate the operation and affairs of a National Bank, for it is equivalent to an order by the State of California to the depositors of National Banks to change the amount of their deposits every so often and their failing to do so would cause such deposits to escheat to the State. This would certainly be a "regulation" of the affairs and operation of a National Bank.

This may be illustrated by stating the matter thus:

Congress in creating National Banks, had it chosen to do so, could have provided that the amount of deposit should be changed either by increasing or decreasing the same every so often.

This would be a clear case of the "regulation" of the affairs and operations of the bank. Congress did not do so. If the State attempts to do so is the State not attempting to regulate the affairs and operation of National Banks? If such a provision in the Federal Statutes had contained such a law then such regulations in its laws would clearly be deemed the regulating of the operation and affairs of the banks. Why then should not the very same thing, if at-

tempted by the State laws be an attempted regulation of the affairs of National Banks?

82 It clearly would be.

Our Supreme Court has passed upon this point in various cases. The case of Robbins v. Shelby Taxing District, 120 U. S. 489, 493 decides this very thing as shown by the quotation from that case at the very beginning of point "Eleven" of this petition.

Section 5136 of the U. S. Revised Statutes, in subdivision 7 thereof, expressly gave the National Banks the power to receive deposits and also the power to loan money. We have shown also that the money when deposited becomes the money of the bank and therefore when Congress expressly gave the National Bank the power to loan money it gave it the power to loan the money which was deposited with it as its own money, and, in fact, it is a well known fact, (which no one doubts), that the bank does loan the money which has been deposited with it.

Now the power thus given to the bank to loan its own money was not restricted by Congress as to the length of the time of such loan. What right then has a state to interfere with the unrestricted power which Congress gave the bank to loan its own money unlimited as to the time during which such loan may be loaned or as to the length of time for which it may be loaned? What right has a state to say to the United States and to the National Bank, "It is true that

83 Congress has given to the bank the unrestricted power to loan its money without any limitation as to the time it is to be loaned or reloaned or kept loaned, but nevertheless this State proposes to pass a law supplementing that statutory right that Congress has given to the Bank, by inserting in such law a provision limiting that power to make the loan of that money if that money — was deposited with the bank shall expire after the expiration of 20 years from the time such deposit was made."

That is the precise question that is presented here. In the light of the authorities which we have cited and quoted from our opening brief and closing brief before the District Court of Appeal as well as the additional authorities which we have cited in this petition, is it pos-ible that any Court can hold that the State has any such power?

Thirteenth.

Whether the damages which would result from enforcing a State law which violates a valid Federal law would be large in amount or trifling in amount is not of the slightest consequence. The only question is as to whether the State law violates what is expressly or impliedly included in the Federal law. If it does, the State law, as we have pointed out, is "absolutely void." Whether the

84 enforcement of such a void law would cause much or little or even only trifling damage is a matter that does not concern the Courts. No difference how slight such damage might be, the law would still be void and could not be enforced to any extent whatever. On this point we make the following quotation:

"Assuming then, that the Central Pacific R. R. Co. has received the important franchises referred to by grant of the United States, the question arises whether they are legitimate subjects of taxation by the State. They were granted to the Company for National purposes and to subserve National ends. It seems very clear that the State of California can neither take them away nor destroy nor abridge them nor cripple them by onerous burdens."

California v. Pacific R. R. Co., 127 U. S. Rep. 1, 40 (Cited as State v. Pacific R. R. Co.)

That quotation is also quoted with approval by our own Supreme Court in the case of San Benito Co. v. S. P. R. R. Co., 77 Cal. 518, 520, where it says:

"The State of California can neither take them away nor destroy nor abridge them nor cripple them by onerous burdens."

Mr. Justice Thornton in the same case at page 525 in his
85 concurring opinion says this:

"The amount of the tax is so small in the case before us that it cannot be considered onerous, but in the view taken by the Supreme Federal tribunal, the foregoing considerations are of no weight. The power of the State to tax is held not to exist at all, without regard to the fact whether the tax is so trifling as not to in any degree be onerous. * * * Following then, the judgments of the Supreme Court of the United States in the cases above cited, we must hold that the license tax under consideration was levied without authority of law, and must be held void."

Should, therefore, the sum total of the claims for deposits in the Federal banks illegally confiscated by Section 1273 of the State, (should that section be enforced), be a large or a small precentage of the total amount of the claims for deposits that would be presented for payment when the bank should finally wind up its affairs and go out of existence, cuts no figure whatever. What that percentage might be we have no idea, and we are not called upon to inquire. Section 1273 is either void or it is valid. If it is void that is the end of the matter.

Fourteenth.

The following has become the rule in the Supreme Court of the United States, the decision being written by Mr. Justice Field:

86 "We consider that act," (the National Bank Act), "as constituting by itself a complete system for establishment and government of National Banks. * * * Everything essential to the formation of the banks, the issues, security, and redemption of their notes, the winding up of the institution, and the distribution of their assets, are fully provided for."

Cook County National Bank v. U. S., 107 U. S. 448.

This decision was followed and approved by the Supreme Court of the United States in the subsequent case of Davis v. Elmira Savings Bank, 16 Sup. Ct. Rep. 504, which later case was written by Mr. Justice White.

This being the binding rule it would seem impossible that when the United States says in its National Bank laws that upon the winding up of the bank, when it no longer continues in business, none of the claims that are not presented or, if presented, are not allowed, shall participate in the distribution of the assets of the bank, but that all presented and allowed claims shall be first paid out of the assets, (and money deposited with the bank, is, as we have seen, the property of the bank, and therefore a part of its assets), and upon such claims, which had been presented and allowed, being fully paid, then whatever assets that may then be left, shall be dis-
87 tributed to the then shareholders of the bank. It will be noted that in the quotation above inserted it is said that the National Bank Act provides "everything essential" to * * * "the winding up of the institutions and the distribution of their assets are fully provided for."

Does that not show that the framers of that law had in mind the fact that some assets of the bank would exist by reason of unpresented claims?

For over 50 years before Section 1273 was passed, some national bank concluded to go out of existence and did so. Can it be disputed that in all those cases there were not some unpresented claims, such, for instance, as the one sought to be confiscated by the State in this case and which therefore still constituted a part of the assets of the bank, and which were distributed accordingly to the shareholders of the bank?

Does not the quotation above set forth state that the winding up of the institution and the distribution of their assets "are fully provided for?" If such distribution of their assets were fully provided for, was the State at liberty to change the distribution thus provided by Congress? Can the State now say that during all these 50 years, the distribution, in cases similar to the one now pre-
88 sented, was wrong, that it was not provided for although the Supreme Court of the United States says that it was fully provided for? Can the State at the end of 50 years come in and say that for half a century it was asleep but that now it was awake and had discovered a way in which it could defeat the provision which the Supreme Court had said was fully sufficient for the distribution of assets of the bank when the bank should go out of existence; and that what it had discovered was the fact that it could call something an escheat which belied the name and definition of "escheat," and that it could prevent there being any assets, of the kind in litigation in the present case which was owned by the bank, by confiscating the same to itself, so that when the time arrived for distribution there would be no such assets then existing?

Until 1915 there never was any law that a depositor would lose his claim for payment of the deposit unless he either added to it or diminished it during a specific time named by the State. There

was no duty, legal or otherwise, which he violated by not making a change in his account. If he or his heirs should appear when the bank is being wound up and puts in his claim for payment of his deposit he would find that the State had assumed to draw the money owing for such deposit, not as his assignee, nor as his heir, for
89 the State was neither his heir nor his assignee, nor because he had violated any law of the State, for, there had been no law of the State ever named that could be violated, but simply because he had not done something during the time when there was no law requiring that something to be done. He would then have been deprived of his claim or if not deprived of it then the bank would have to repay the same to him after having already paid the same to the State. Not only that but the bank would be deprived of the use of this money, which it owns as its own during all the years intervening from the time the State deprived the bank of its own money until the final winding up of the bank.

And finally, in closing, we wish to call the Court's attention to the following:

Many of the points made in our briefs on file in the District Court of Appeal were not even noticed, much less attempted to be answered. We may have over-confidence, but in our judgment they could not be answered. Such for instance as to the meaning of the words used by the Supreme Court in the case of Provident Institution for Savings vs. Malone, 31 Sup. Ct. Rep. 663, as quoted on page 12 of our opening brief. If this Court will read what is there said on pages 11 to 14 inclusive concerning the meaning of those
90 remarks of the United States Supreme Court, we believe that it will come to the same conclusion that we did, namely, that that case means what we claimed it meant and is absolutely decisive of this case.

For instance, that the word "escheat" used in Section 1273 is not used in the sense that the word "escheat" is used at common law or defined in the Standard Dictionaries of the day, as set out on page 16 of our opening brief.

For instance, as to why, in Section 5137 of the Revised Statutes, Congress, whenever it intended to limit the time during which a National Bank may hold certain property, it expressly states that there is a limit to the time of its holding, but does not so state in the preceding section how long the National bank can hold deposits made with it and which have become its own property; showing that it did not intend that the holding of such property should be limited.

As for instance; why Congress worded different sections of the statutes as it did, except on the theory that deposits were not to be deemed as being any the less as deposits because of the length of time they were held as deposits, reference hereby being made to Sections 5191, 5202, 5214, and 5215, (pages 22-24 of our opening brief).

And also in many other particulars appearing in our
91 briefs which your Honors will readily see upon reading our briefs without our here specifying the same.

Before finally closing, however, we earnestly request that the

Court will read the connection between a National Bank and the fiscal management of the United States so eloquently and forcibly portrayed in such clear, convincing language by Chief Justice Marshall of the Supreme Court of the United States. This will be found set out in our opening brief on pages 53 to 57. We think that what is there said should put at rest all doubts as to the fact that a National Bank under our National Bank Law is virtually a government agent and is put beyond being subject to any state laws concerning any of the matters with which the National Bank Law deals.

It is true that decision was with reference to National Banks which were formed directly by an act of Congress; yet, as said by the Supreme Court of the United States in the case of Easton v. State of Iowa, 23 Ct. Rep. 288 as quoted on page 52 of our opening brief, the principles which Chief Justice Marshall was urging "though expressed in respect to banks incorporated directly by acts of Congress, are yet applicable to the later and present system of National Banks." (See quotation on page 52 of our opening brief.)

92 We also direct the Court's attention to Appellant's Reply Brief which we request the Court to consult, as its references will, we hope, lighten the Court's labors.

We respectfully ask for a hearing and decision of this cause in the Supreme Court of the State of California.

Respectfully submitted,

LEIB & LEIB,
Attorneys for The First National Bank of San Jose, Defendant and Appellant.

93 Filed Dec. 17, 1920.

In the District Court of Appeal of the State of California in and for the Third Appellate District.

Civil No. 2088 (Sacramento).

STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

ANGLO AND LONDON PARIS NATIONAL BANK OF SAN FRANCISCO, a Corporation, et al., Defendants; First National Bank of San Jose, Defendant and Appellant.

The character of the action and the controlling facts in the case are disclosed by this finding of the trial court: "That for more than twenty years prior to the institution of this action there was on deposit with the said defendant bank to the credit of P. A. Campbell the sum of $1,192.25; that for more than twenty years prior to the institution of this action the said P. A. Campbell has not made any deposit to the credit of said account or withdrawn any

94 part thereof or the or any interest or dividends accruing thereon; that the said money and account so deposited and

all accruing interest and dividends thereon have remained unclaimed for more than twenty years after the same were so deposited or credited, and after the withdrawal of any part of the principal or interest or dividends, and said moneys and account now are unclaimed; that the date of the last transaction in connection with the said deposit of the said P. A. Campbell, whether by deposit or withdrawal of any portion of such account or by withdrawal of any interest or dividends accruing hereon, was on the 10th day of November 1880; that neither the said depositor nor any claimant of the said deposit or account, or of any interest or dividends thereon, has filed any notice with the said defendant bank showing the present residence of the said P. A. Campbell, and the said P. A. Campbell is not known to the president or to the managing officers of the said defendant bank to be now living; that the name of the said depositor, P. A. Campbell, together with the date of the last transaction in connection with his said deposit or account, and the amount now on deposit in the said defendant bank to the credit of the said depositor were all contained in the annual statement of the said defendant bank filed with the State Controller of the State
95 of California in January, 1917, as required by law, and the Attorney General of the State of California has been informed of all of the foregoing facts."

It is not disputed that the proceedings were based upon and in accordance with the provisions of Section 1273 of the Code of Civil Procedure. The only part of said section involved in the controversy is the following: "All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest, and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, escheat to the state."

As to the authority of the legislature to provide that after a reasonable time property within the territorial limits of the state, which has not been claimed, may be deemed abandoned by the owner and title thereto vested in the state itself, the authorities are practically uniform. In other words, the general intent, significance and application of such legislation must be recognized and maintained.

Among the many decisions affirming the existence of this
96 power we may cite: Provident Institution for Savings vs. Malone, 221 U. S. 660; Nelson vs. Blinn, 83 N. E. 889; Commonwealth vs. Thomas, 131 S. W. 797; Germantown Trust Co. vs. Powell, 108 Atl. 441. The reasons underlying and justifying such legislation are fully stated in these decisions and need not be repeated here. It is sufficient to say that the property within the state is held subject to reasonable and necessary regulation by the commonwealth as to how title shall be vested and for what cause lost, and it is competent for the legislature to determine that it is against the

public welfare for property to remain unclaimed and unproductive for years, and that, if after a reasonable period it is not claimed, that fact shall justify the state in taking possession of it and even appropriating it to the service of the people generally. There would seem to be no ground for controversy upon this point and we may pass it without further comment.

Nor is there any more doubt, speaking generally, that the state has exclusive control, subject to certain constitutional limitations, of all property within its jurisdiction. In Pennoyer vs. Neff, 95 U. S. 714, it is stated that there are two well established principles of public law respecting the jurisdiction of an independent state over per-
97 sons and property. "One of these principles is, that every state possesses exclusive jurisdiction and sovereignty over persons and property within its territory. * * * The other principle of public law referred to follows from the one mentioned; that is, that no state can exercise direct jurisdiction and authority over persons or property without its jurisdiction."

Indeed it is not disputed that the general rule is that "the power to regulate property within the limits of the state, the modes of acquiring and transferring it and the rules of descent and distribution of property are subjects belonging exclusively to the jurisdiction of the state," but appellant insists that said section 1273 of the Code of Civil Procedure has no application to deposits made in National Banks for the reason that "the sovereign that created national banks is the United States," that such sovereign alone has the right to enact and which has enacted laws for the government of national banks and that such deposits are subject to and controlled by said statutes entirely independent of any enactment passed by the state legslature. This is the objection as we understand it, stated in somewhat general terms. Some more specific considerations are urged but they are based upon the fundamental principle already stated. Indeed appellant considers such legislation, so far as it may
98 be said to apply to national banks, as a regulatory measure and it is declared: "The state has no power to regulate national banks. The regulation of national banks has always been solely within the provision of the United States and not in any degree within the province of the state, especially when attempted regulation of the state would conflict with the laws of the United States regulations, as is the case here."

The extent to which said banks may be subject to state statutes has been settled in general terms by the decisions of the United States Supreme Court, although much has been left to the exercise of a wise discretion in the application of the general principle to the particular facts of each case.

In McClellan vs. Chipman, 164 U. S. 347, it is said: "Two propositions have been long since settled by the decisions of this court. First, national banks 'are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the state than of the nation. All their contracts are governed and construed by state laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for

debts, are all based on state law. It is only when the state
99 law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional.' National Bank vs. Commonwealth, 9 Wall 362.

"Second, 'National banks are instrumentalities of the Federal government created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a state to define their duties, or control the conduct of their affairs, is absolutely void, whenever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislature, or impairs the efficiencies of these agencies of the Federal government to discharge the duties for the performance of which they were created.' Davis vs. Elmira Savings Bank, 161 U. S. 275.

"These two propositions, which are distinct, yet harmonious, practically contain a rule and an exception, the rule being the operation of general state laws upon the dealings and contracts of national banks, the exception being the cessation of the operation of such laws whenever they expressly conflict with the laws of the United States or frustrate the purpose for which the national banks were created, or impair their efficiency to discharge the duties im-
100 posed upon them by the law of the United States."

It is not contended that there is any statute of the United States providing for the forfeiture of what is called inactive deposits in national banks nor is it claimed that Congress has by any legislation limited the time within which such deposits may be checked out. Indeed, it is admitted that there is no Federal statute expressly in conflict with said section of the Code of Civil Procedure, in fact, it is apparent that congress has not attempted to legislate on this subject at all. Hence, it seems clear that the legislation herein does not "expressly conflict with any law of the United States," and is therefore not required to yield to the paramount authority of the Federal government because inconsistent therewith.

It seems equally plain that this statute in its operation does not incapacitate the bank from discharging its duties to the government nor does it in the least impair its efficiency as a governmental agency. It is not denied that the depositor could at any time while the bank is a going concern withdraw his deposit with interest, or—what is substantially equivalent—require the same amount to be paid to him in honor of his check—nor is it doubted that he could assign his claim and thereby clothe the assignee with the same right.
101 In either of such events it would not be deemed an interference with the proper administration of the business of the bank or an impairment of its usefulness as a governmental agency. Indeed, such withdrawal or the satisfaction of such claim would be in entire harmony with one of the primary purposes of the organization and operation of such banks and is contemplated by the very terms of the charter.

That a claimant may have succeeded to the right to demand such payment otherwise than by assignment, for instance, by abandon-

ment or forfeiture, would not, of course, render the transaction any the more a disturbance of the legitimate functions of the bank. In other words, it must be admitted, that as far as this question and the interest of the bank in said deposit are concerned, it makes no difference whether the claim is presented by the depositor or by his successor by whatever title.

Certain decisions have been cited to illustrate the application of this principle to which we may briefly refer.

Similar legislation as it relates to national banks was involved in State vs. First Nat. Bank of Portland, 123 Pac. 712, and it was held by the Supreme Court of Oregon, "that national banks are only exempted from state legislation to the extent that such legislation impairs their efficiency to perform the functions which they
102 were designed to serve, and that the legislation here proposed does not have this effect."

In First National Bank vs. Commonwealth, 137 S. W. 518, the Court of Appeals of Kentucky held that "where a national bank in the state held real estate, not necessary to its business, for more than five years, the property was subject to escheat under the state law, it appearing that it would not impair the efficiency of the bank."

In National Bank vs. Commonwealth, 76 U. S. 353, a state law requiring a national bank to pay the tax which is rightfully laid on the shares of its stock was upheld, the court reiterating the doctrine that instrumentalities are exempt from state legislation only to the extent that such legislation may impair or destroy the efficiency of these agencies of the Federal government.

In Waite vs. Dowley, 94 U. S. 527, it was held that "a state statute is not void, which, for the purposes of taxation, requires, under a penalty for his neglect or refusal, the cashier of each national bank within the state to transmit, on or before the fifteenth day of April in each year, to the clerks of the several towns in the state in which any stock or share holders of such bank shall reside, a true list of the names of such stock or share holders on the books
103 of such bank, together with the amount of money actually paid in on each share on the first day of that month."

In McClellan vs. Chipman, supra, legislation by the state of Massachusetts invalidating preferences by *by* insolvent debtors and assignments or transfers made in contemplation of insolvency was held to apply to national banks and not to be in conflict with any statute of the United States.

In Gutherie vs. Harkness, 199 U. S. 148, it was held that a state court had the right by mandamus to enforce the right of a stockholder in a national bank to inspect the books of the corporation.

Appellant seems to think that the tontine principle is involved in the disposition of the deposits made in a national bank, that is upon the dissolution of the corporation the then depositors would receive the money of those absent and unknown. Our attention has been invited to no provision in the charter or by-laws of such banks or in any statute, State or Federal, which gives countenance to this view. The National Bank Act provides that in case of the dissolu-

tion of a national bank the assets shall be used to pay the claims of the depositors, and the surplus, if any, shall be distributed to the shareholders, not to the depositors. No depositor has any interest in the deposit of another, except, of course incidentally as he is interested in the prosperity of the bank.

104 The interest of the shareholder in the deposit is not vested but contingent upon the event that it may not be claimed by the depositor or any one representing him. The law in reference to the disposition of the assets of the national bank upon dissolution is not dissimilar to that applying to the state banks, but in neither case is there anything in derogation of the right of the depositor or his successor in interest to maintain his claim to the entire deposit. It is manifest that no depositor is required to leave his deposit in the bank indefinitely or until the dissolution of the bank. No such obligation is expressed or implied in any provision of the statute, as far as we know. Of course, the ability of a national bank to loan money depends upon the amount of its deposits, and it might be a great advantage to such corporation for the depositors to allow their money to be so used indefinitely, but the law does not require it nor does it impose any such duty upon any one succeeding to the interest of the depositor.

Of all the objections made by appellant we think only one possesses any merit. That relates to the peculiar language of the statute providing that the amount of money deposited shall escheat to the

105 state. Appellant is undoubtedly right in the claim that deposits in national as well as in state banks become the property of the bank and thereby *is* created a debt in favor of the depositor to the amount of the deposit, and it is this debt which is paid in honor of the check of the depositor. Smith's Cash Store vs. First National Bank, 149 Cal. 32. It follows that the deposits mentioned in the complaint herein became a part of the actual assets and funds of the bank, and those identical funds could not, of course, escheat to the state by reason of any default of the depositor. Manifestly, the bank could not be deprived of its own funds in this summary manner without any default on its part. But while the language of the section is not very apt, it should be given a reasonable construction and one, if possible, that will sustain, and not defeat the law. No doubt it was the intention of the legislature to provide that the right or claim of the depositor to such indebtedness should be forfeited or should "escheat" to the state. It would be an impeachment of the common sense of the lawmakers to assume that they contemplated the forfeiture of the identical money that was deposited. It is not disputed that the language employed in said section is similar to that used generally in such statutes and involved in the decisions to

106 which we have referred, and we think the reasonable interpretation is that the property affected by the escheat is the credit held by the depositor against the bank.

We do not agree with appellant in its construction of the term escheat as used in said statute. It is said that "an escheat can be taken over by the sovereignty only in cases where the property rights existed by reason of the sovereignty which claims the escheat, or

where the property has been forfeited for violation of wrong committed against some valid law of that particular sovereignty," and that the United States of America is that sovereignty. Hence, the contention, that, if there could be an escheat of the depositor's interest, it must be in favor of the United States and not of the state. The mistake is in assuming that said property rights arise from and are governed by the Federal statute. On the contrary they are created and controlled by the state law as the decisions abundantly show. In that respect the relation between a national bank and its depositor is placed upon the same footing as in the case of a state bank. The sovereignty therefore, to which the escheat inures, is the State and not the United States.

After a careful consideration of the able brief of appellant,
107 we think no valid objection has been or can be made to this legislation.

The judgment is, therefore, affirmed.

BURNETT, *J.*

We concur:

PREWETT,
P. J. pro Tem.
HART, *J.*

108 In the Supreme Court of the State of California.

Sac. No. 3215.

THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

ANGLO & LONDON PARIS NATIONAL BANK OF SAN FRANCISCO et al., Defendants; The First National Bank of San Jose, Defendant and Appellant.

In view of the pendency in this court of an appeal involving questions presented by this appeal, which has been submitted for decision herein, the petition to have the above entitled cause heard and determined by this court after judgment in the District Court of Appeal for the Third Appellate District is granted, and said cause transferred to this court for hearing and decision.

Dated this 14th day of February, 1921.

ANGELLOTTI, *C. J.*
SHAW, *J.*
WILBUR, *J.*
SLOANE, *J.*
LENNON, *J.*
LAWLOR, *J.*
OLNEY, *J.*

108½ Sac. Nos. 3215, 3047, 3217. In Bank. August 29, 1921

STATE OF CALIFORNIA, Plaintiff and Respondent,

v.

ANGLO AND LONDON PARIS NATIONAL BANK OF SAN FRANCISCO et al., Defendants. First National Bank of San Jose, Defendant and Appellant in Sac. No. 3215. First National Bank of Santa Barbara, Defendant and Appellant in Sac. No. 3047. Crocker National Bank of San Francisco, Defendant and Appellant in Sac. No. 3217.

109 This is an action by the State of California begun in pursuance of the provisions of section 1273 of the Code of Civil Procedure against the above-mentioned defendants and a large number of persons alleged to be depositors in said banks to obtain a judgment against said banks, respectively, declaring that the credits of the depositors therein mentioned in the respective banks have escheated to the State of California, and directing the respective banks to forthwith deposit the same with the state treasurer. Separate findings and a separate judgment were given and entered in the case with respect to each of the three defendants who are appellants above named. From each of these judgments the respective banks have taken separate appeals and the same are presented in separate transcripts filed in this court. The three appeals all raise the same questions and they will be considered together as one case.

The questions presented in these cases, with one exception, are considered and fully treated in the opinions of this court in State v. Security Savings Bank, filed on July 5, 1921 (Sac. No. 2890, 62 Cal. Dec. 63), and in State v. Savings etc. Co., filed on June 20, 1921 (Sac. No. 2922, 61 Cal. Dec. 847), and were thereby decided adversely to the contentions of the appellants. The facts presented in the cases now before the court are in all respects similar to those stated in the opinion in State v. Security Savings Bank, supra. It is unnecessary to restate those questions or to repeat the reasons given in support of our conclusions thereon. We refer to those decisions for such statement.

The one question not considered in those decisions arises from the fact that each of the three appellants in the cases now under consideration is a national bank organized and doing business under the laws of the United States. At the time the rehearings were granted from the decisions of the district court of appeal of the third district on the appeals of the First National Bank of San Jose and the Crocker National Bank of San Francisco, the other cases above mentioned were pending and the rehearings were granted because we deemed it best to have the entire subject before this court before any decision therein should become final. With respect to the question arising out of the fact that the appellants now before the court are national banks governed by the laws of the United States, the opin-

ion prepared by Mr. Justice Burnett of the district court of appeal of the third district on the appeal of the First National Bank of San Jose (Sac. No. 3215) is satisfactory to this court, and we hereby adopt the same as the opinion of this court. It is as follows:

"It is not disputed that the general rule is that 'the power to regulate property within the limits of the state, the modes of acquiring and transferring it and the rules of descent and distribution of property are subjects belonging exclusively to the jurisdiction of the state', but appellant insists that said section 1273 of the Code of Civil Procedure has no application to deposits made in national banks for the reason that 'the sovereign that created national banks is the United States, that such sovereign alone has the right to enact, and has enacted, laws for the government of national banks and that such deposits are subject to and controlled by said statutes entirely independent of any enactment passed by the state legislature. This is the objection as we understand it, stated in somewhat general terms. Some more specific considerations are urged but they
110 are based upon the fundamental principle already stated. Indeed appellant considers such legislation, so far as it may be said to apply to national banks, as a regulatory measure and it is declared: 'The state has no power to regulate national banks. The regulation of national banks has always been solely within the provision of the United States and not in any degree within the province of the state, especially when attempted regulations of the state would conflict with the laws of the United States regulations, as is the case here.'

The extent to which said banks may be subject to state statutes has been settled in general terms by the decisions of the United States Supreme Court, although much has been left to the exercise of a wise discretion in the application of the general principle to the particular facts of each case.

In McClellan v. Chipman, 164 U. S. 347, it is said: 'Two propositions have been long since settled by the decisions of this court: First, national banks, "are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the state than of the nation. All their contracts are governed and construed by state laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on state law. It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional." National Bank v. Commonwealth, 9 Wall. 362.

'Second, "National banks are instrumentatities of the Federal government created or a public purpose, and as such necessariily subject to the paramount authority of the United States. It follows that an attempt by a state to define their duties, or control the conduct of their affairs, is absolutely void, whenever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislature or impairs the efficiencies of these agencies of the Federal govern-

ment to discharge the duties for the performance of which they were created". Davis v. Elmira Savings Bank, 161 U. S. 275.

'These two propositions, which are distinct, yet harmonious, practically contain a rule and an exception, the rule being the operation of general state laws upon the dealings and contracts of national banks, the exception being the cessation of the operation of such laws whenever they expressly conflict with the laws of the United States or frustrate the purpose for which the national banks were created, or impair their efficiency to discharge the duties imposed upon them by the law of the United States.'

It is not contended that there is any statute of the United States providing for the forfeiture of what is called inactive deposits in national banks, nor is it claimed that congress has by any legislation limited the time within which such deposits may be checked out. Indeed, it is admitted that there is no federal statute expressly in conflict with said section of the Code of Civil Procedure. In fact, it is apparent that congress has not attempted to legislate on this subject at all. Hence, it seems clear that the legislation herein does not 'expressly conflict with any law of the United States', and is therefore not required to yield to the paramount authority of the federal government because inconsistent therewith.

It seems equally plain that this statute, in its operation, does not incapacitate the bank from discharging its duties to the government, nor does it in the least impair its efficiency as a governmental agency. It is not denied that the depositor could at any time while the bank is a going concern withdraw his deposits, with interest, or—what is substantially equivalent—require the same amount to be paid to him in honor of his check; nor is it doubted that he could assign his claim and thereby clothe the assignee with the same right.
111 In either of such events it should not be deemed an interference with the proper administration of the business of the bank or an impairment of its usefulness as a governmental agency. Indeed, such withdrawal or the satisfaction of such claim would be in entire harmony with one of the primary purposes of the organization and operation of such banks and is contemplated by the very terms of the charter.

That a claimant may have succeeded to the right to demand such payment otherwise than by assignment—for instance, by abandonment or forfeiture—would not, of course, render the transaction any the more a disturbance of the legitimate functions of the bank. In other words, it must be admitted that as far as this question and the interest of the bank in said deposit are concerned, it makes no difference whether the claim is presented by the depositor or by his successor by whatever title.

Certain decisions have ben cited to illustrate the application of this principle, to which we may briefly refer.

Similar legislation as it relates to national banks was involved in State v. First Nat. Bank of Portland, 61 Ore. 551, 123 Pac. 712, and it was held by the supreme court of Oregon, 'that national banks are only exempted from state legislation to the extent that such legisla-

tion impairs their efficiency to perform the functions which they were designed to serve, and that the legislation here proposed does not have this effect'.

In First National Bank v. Commonwealth, 137 S. W. 518, the court of appeals of Kentucky held that 'where a national bank in the state held real estate, not necessary to its business, for more than five years, the property was subject to escheat under the state law; it appearing that it would not impair the efficiency of the bank'.

In National Bank v. Commonwealth, 76 U. S. 353, a state law requiring a national bank to pay the tax which is rightfully laid on the shares of its stock was upheld, the court reiterating the doctrine that such instrumentalities are exempt from state legislation only to the extent that such legislation may impair or destroy the efficiency of these agencies of the federal government.

In Waite v. Dowley, 94 U. S. 527, it was held that 'a state statute is not void, which, for the purposes of taxation, requires, under a penalty for his neglect or refusal, the cashier of each national bank within the state to transmit, on or before the fifteenth day of April in each year, to the clerks of the several towns in the state in which any stock or shareholders of such bank shall reside, a true list of the names of such stock or shareholders on the books of such bank, together with the amount of money actually paid in on each share on the first day of that month'.

In McClellan v. Chipman, supra, legislation by the state of Massachusetts invalidating preferences made by insolvent debtors and assignments or transfers made in contemplation of insolvency was held to apply to national banks, and not to be in conflict with any statute of the United States.

In Gutherie v. Harkness, 199 U. S. 148, it was held that a state court had the right by mandamus to enforce the right of a stockholder in a national bank to inspect the books of the corporation.

Appellant seems to think that the tontine principle is involved in the disposition of the deposits made in a national bank; that is upon the dissolution of the corporation the then depositors would receive the money of those absent and unknown. Our attention has been invited to no provision in the charter or by-laws of such banks or in any statute, state or federal, which gives countenance to this view. The National Bank Act provides that in case of the dissolution of a national bank the assets shall be used to pay the
112 claims of the depositors, and the surplus, if any, shall be distributed to the shareholders, not to the depositors. No depositor has any interest in the deposit of another, except, of course, incidentally as he is interested in the prosperity of the bank.

The interest of the shareholder in the deposit is not vested but contingent upon the event that it may not be claimed by the depositor or any one representing him. The law in reference to the disposition of the assets of the national bank upon dissolution is not dissimilar to that applying to the state banks, but in neither case is there anything in derogation of the right of the depositor or his successor in interest to maintain his claim to the entire deposit. It is

manifest that no depositor is required to leave his deposit in the bank indefinitely or until the dissolution of the bank. No such obligation is expressed or implied in any provision of the statute, as far as we know. Of course, the ability of a national bank to loan money depends upon the amount of its deposits, and it might be a great advantage to such corporation for the depositors to allow their money to be so used indefinitely, but the law does not require it, nor does it impose any such duty upon any one succeeding to the interest of the depositor.

Of all the objections made by appellant we think only one possesses any merit. That relates to the peculiar language of the statute providing that the amount of money deposited shall escheat to the state. Appellant is undoubtedly right in the claim that deposits in national as well as in state banks become the property of the bank, and thereby is created a debt in favor of the depositor to the amount of the deposit, and it is this debt which is paid in honor of the check of the depositor. Smith's Cash Store v. First National Bank, 149 Cal. 32. It follows that the deposits mentioned in the complaint herein became a part of the actual assets and funds of the bank, and those identical funds could not, of course, escheat to the state by reason of any default of the depositor. Manifestly, the bank could not be deprived of its own funds in this summary manner without any default on its part. But while the language of the section is not very apt, it should be given a reasonable construction and one, if possible, that will sustain and not defeat the law. No doubt it was the intention of the legislature to provide that the right or claim of the depositor to such indebtedness should be forfeited or should 'escheat' to the state. It would be an impeachment of the common sense of the lawmakers to assume that they contemplated the forfeiture of the identical money that was deposited. It is not disputed that the language employed in said section is similar to that used generally in such statutes and involved in the decisions to which we have referred, and we think the reasonable interpretation is that the property affected by the escheat is the credit held by the depositor against the bank.

We do not agree with appellant in its construction of the term 'escheat' as used in said statute. It is said that 'an escheat can be taken over by the sovereignty only in cases where the property rights existed by reason of the sovereignty which claims the escheat, or where the property has been forfeited for violation of wrong committed against some valid law of that particular sovereignty', and that the United States of America is that sovereignty. Hence, the contention that, if there could be an escheat of the depositor's interest, it must be in favor of the United States and not of the state. The mistake is in assuming that said property rights arise from and are governed by the federal statute. [1] On the contrary, they are created and controlled by the state law, as the decisions abundantly show. In that respect the relation between a national bank and its depositor is placed upon the same footing as in the case of a state bank. The sovereignty, therefore, to which the escheat inures, is the state and not the United States."

113 We deem it proper to repeat the statement at the conclusion of our decision in State v. Security Savings Bank, supra, that we express no opinion upon the question whether the judgment of the superior court herein operates as a present escheat of the rights of the several depositors against the respective banks, or whether under section 1272 they each still have the right within the time there stated to prosecute an action to obtain payment of their several deposits from the state treasurer, and to say that if they have such right the judgment of the superior court would not be a bar thereto.

The judgment appealed from in each of the said appeals is hereby affirmed.

SHAW, *J.*

We concur:
SLOANE, *J.*
WILBUR, *J.*
LENNON, *J.*
LAWLOR, *J.*
ANGELLOTTI, *C. J.*

114 In the Supreme Court of the State of California.

Sac., No. 3215.

THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

ANGLO & LONDON PARIS NATIONAL BANK OF SAN FRANCISCO et al. Defendants; The First National Bank of San Jose, Defendant and Appellant.

Petition of the First National Bank of San Jose for Rehearing.

Leib & Leib, Attorneys for Petitioner.

Filed September 14th, 1921.
B. GRANT TAYLOR, *Clerk*,
By HASKELL, *Deputy*.

115 In the Supreme Court of the State of California.

THE STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

ANGLO & LONDON PARIS NATIONAL BANK OF SAN FRANCISCO et al. Defendants; The First National Bank of San Jose, Defendant and Appellant.

Petition of the First National Bank of San Jose for Rehearing.

The First National Bank of San Jose, the defendant and appellant in the above entitled action, (Sacramento No. 3215), respect-

fully asks the above entitled Court to grant it a rehearing in such action.

It requests such rehearing upon the points presented in its opening and closing briefs filed in the Third District Court of Ap-
116 peal for the District of Sacramento and in its petition filed in this Court after a judgment rendered against it by such District Court of Appeal, in which petition it asks this Court to make an order that its case be heard and determined in this Court, and upon the points presented at the hearing of the oral argument in this Court on behalf of this defendant. All of such points were clearly stated to the best of our ability and need not be again repeated here, for those briefs, petition for hearing in this Court, and oral argument, are still before this Court for its consideration in passing upon this petition, and we earnestly request this Court to give the same a further consideration before determining this petition.

We do wish, however, to again point out the fact that, for the State of California to confiscate, or, as it states, to escheat, a part of our deposits, is to directly violate the clear provisions of the National Bank law; and in doing so we will not take more space than we feel is justifiable.

First.

It is conceded by the District Court of Appeal (and by this Court in adopting the opinion of that Court as its own opinion), that the State cannot pass any law which, in the language quoted by
117 it from McClellan vs. Chipman, 164 U. S., 347, "expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislature or impairs the efficiencies of these agencies of the Federal Government to discharge the duties for the performance of which they are created", and if it does do so, such action of this State is absolutely void.

At this point we ask the Court to read Section 5214 of the Revised Statutes of the United States. It is referred to in our brief, which is designated as our "Opening Brief", at pages 23-24 and is set out in full in our Reply Brief at pages 17-18. That section imposes an annual tax on the National Bank of one half of one per cent "upon the average amount of its deposits". This language means exactly the same as though it read "upon the average amount of the deposits of said bank." That this is the exact meaning of the phrase used, we submit cannot, and we venture will not, be questioned.

Now what does the phrase "the deposits of said bank" mean? Does it mean the average of the whole deposits or only the average amount of a part of the deposits of the bank? What right exists for the State to make any deduction whatever? The words "the deposits of said bank," or, what is exactly the equivalent
118 thereto, the word- "its deposits" mean exactly the same thing.

What does the word "the" mean in such a case? Does it not mean the average amount of "the whole deposits of the bank?" The word "the" means "all". Certainly what is so plain would seem to need no support from citation of authorities. If, however,

by any possibility the Court should think authorities should be cited in support of that proposition, then we refer to three of its own decisions which so decide, viz:

"The complaint avers that the defendants are 'the duly elected trustees of said Company'; which, upon every rule of grammatical construction is precisely equivalent to an averment that they are the only trustees."

Parrott vs. Byers, 40 Cal. 614, 622.

"The statement that San Francisco was the place of business would seem to imply that it was not only the principal, but the only place of business."

People vs. Montecito Water Co., 97 Cal. 276, 278.

"The allegation that the defendants executed the written contract means that all of them, including Lowell Standart, executed it."

Walsh vs. Standart, 174 Cal. 807, 809.

119 Now, this being so, could the State legally diminish the amount of tax which the National Bank Law expressly states that it should receive from a duty or tax upon the deposits of such National Bank—upon every deposit of such bank—whether twenty years old or ten years old or five years old—by the simple act of passing a law purporting to confiscate some of the deposits of such bank to its own use? Has not the United States Supreme Court held that the State could not do any such thing? Has not the State, in this case, attempted to diminish the taxes that the National Bank Law expressly provides by the very terms of Section 5214 of the United States Revised Statutes should go to the United States Treasury? Does not that attempted State law absolutely conflict with that Federal law?

In this connection, we ask the Court to read Section 5215 of the Revised Statutes, cited in our Opening Brief at page 24 and set out at length on page 18 of our Reply Brief. As Section 5214 requires the National Banks to pay taxes to the United States on all of its deposits, it certainly should be, and is, protected against having any of those deposits confiscated. If, on the other hand, it is contended

120 that the State can pass a law confiscating to itself a part of those deposits, claiming that by reason of such confiscation, the bank can refuse to comply with the National Bank Law, which requires it to pay to the United States such tax on all of its deposits, would not such contention, if carried out, necessarily result in the ability of the State, by its legislation, to lessen the amount of tax which the United States law required to be paid into the United States Treasury?

It certainly would.

Can, therefore, such contention be made, or, if made, can it be allowed to prevail? Can the State be allowed, by its legislation, to conflict with, and prevail against, and over-ride an express statute of the United States?

Second.

Section 5191 of the United States Revised Statutes reads as follows:

"Section 5191. Every national banking association in either of the following cities: Albany, Baltimore, Boston, Cincinnati, Chicago, Cleveland, Detroit, Louisville, Milwaukee, New Orleans, New York, Philadelphia, Pittsburgh, Saint Louis, San Francisco, and Washington, shall at all times have on hand, in lawful money of the United States, an amount equal to at least twenty-five per centum of the aggregate amount of its notes in circulation and its deposits; and every other association shall at all times have on hand, in
121 lawful money of the United States, an amount equal to at least fifteen per centum of the aggregate amount of its notes in circulation, and of its deposits. Whenever the lawful money of any association in any of the cities named shall be below the amount of twenty-five per centum of its circulation and deposits, and whenever the lawful money of any other association shall be below fifteen per centum of its circulation and deposits, such association shall not increase its liabilities by making any new loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight, nor make any dividend of its profits until the required proportion, between the aggregate amount of its outstanding notes of circulation and deposits and its lawful money of the United States, has been restored. And the Comptroller of the Currency may notify any association, whose lawful-money reserve shall be below the amount above required to be kept on hand, to make good such reserve; and if such association shall fail for thirty days thereafter so to make good its reserve of lawful money, the Comptroller may, with the concurrence of the Secretary of the Treasury, appoint a receiver to wind up the business of the association, as provided in section fifty-two hundred and thirty-four."

It will thus be seen that Section 5191 requires that each National Bank in the larger cities named "shall at all times have on hand in lawful money of the United States an amount equal to at
122 least twenty-five per centum of the aggregate amount of its notes in circulation and of its deposits; and every other association shall at all times have on hand in lawful money of the United States an amount equal to at least fifteen per centum of the aggregate amount of its notes in circulation and of its deposits."

Now, is it not true that if it should be held that Section 1273 of the Code of Civil Procedure of the State of California is valid, it would violate Section 5191 of the National Bank Law in this: That at all times the National Bank Law requires that a given percentage of the aggregate amount of "its deposits"—in other words, a given percentage of all of its deposits—shall be on hand? Whereas Section 1273 of the Code of Civil Procedure of California provides that nothing of that sort shall be done; but that the percentage of the deposits does not mean the percentage of all its deposits, but means

the percentage of all the deposits excepting the amount of those deposits which have not been changed for twenty years. In other words, the National Bank Law provides that the percentage shall be a percentage of all its deposits; whereas the State Statute provides for a condition of affairs which would exclude a part of all its deposits—or, in other words, would exclude a part of the
123 aggregate amount of its deposits. The United States law contains no limitation or exception to the aggregate amount of its deposits. The State law does make such an exception; which we submit, it can not legally do as it would thereby plainly violate an express statute of the United States.

Third.

Section 5136, among other matters, reads as follows:

"Section 5136. Upon duly making and filing Articles of Association and an organization certificate, the Association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power * * *

"Seventh. To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of debt; by receiving deposits; by buying and selling exchange, coin and bullion; by loaning money, * * *

We have just seen by Section 5191 of the Revised Statutes that the National banks could loan all of their deposits at all times, excepting twenty-five per cent thereof in the larger cities
124 and fifteen per cent thereof in the smaller cities. The keeping of this money at interest by the bank not only aids and fortifies the prosperity of the country, but is a great benefit to the banks themselves. It not only allows the banks to use this money for the public good in keeping it loaned out to parties who need it for carrying on their business, but it is also an incentive to the formation of the National Banks and to their continuing in service. The National Banks are more than mere private banks; they are the fiscal agents of the United States, as has many times been decided by the Supreme Court of the United States, which will be seen by cases cited in our briefs before the Court, and some of which will be hereinafter referred to.

If the State could and should say that the National Bank should make no money, there would be no National Banks and, therefore, there would be no fiscal agents of the United States. What the State can not do as a whole, it can not do in part. The Supreme Court of the United States so decided many many years ago in opinions delivered by that great jurist Chief Justice Marshall, from one of which opinions we have quoted at some length in our Opening Brief at pages 53-57. It is true that those decisions were concern-

ing United States Banks created directly by the Statutes of
125 the United States and not under a general Banking Law,
enacted by the United States; but, as said by the United States Supreme Court in the case of Easton vs. State of Iowa, 23 Sup. Ct. Rep. 288, 290-294, 188 U. S. 220, quoted on page 52 of our Opening Brief:

"The principles enunciated in McCulloch vs. Maryland, 4 Wheat. 425, and in Osborn vs. Bank of the U. S., 9 Wheat. 738, though expressed in respect to banks incorporated directly by acts of congress; are yet applicable to the later and present system of National Banks."

That being so, we quote from that decision what was said by Mr. Chief Justice Marshall. That was a case where the State attempted to deprive one of the United States banks of the right to keep the ownership of all its own money and thereby be able to keep it continually loaned out, just as the State is trying to do in the present case. The following is a quotation from the opinion of Chief Justice Marshall above referred to.

"The bank is not considered as a private corporation, whose principal object is individual trade and individual profit; but as a public corporation, created for public and national purposes. That the mere business of banking is, in its own nature, a private business,
and may be carried on by individuals or companies having
126 no political connection with the government, is admitted;
but the bank is not such an individual or company. It was not created for its own sake, or for private purposes. It has never been supposed that congress could create such a corporation. The whole opinion of the court, in the case of M'Culloch v. The State of Maryland, 4 W. 316, is founded on, and sustained by, the idea that the bank is an instrument which is 'necessary and proper for carrying into effect the powers vested in the government of the United States.' It is not an instrument which the government found ready made, and has supposed to be adapted to its purposes; but one which was created in the form in which it now appears, for National purposes only. It is, undoubtedly, capable of transacting private as well as public business. While it is the great instrument by which the fiscal operations of the government are effected, it is also trading with individuals for its own advantage. The appellants endeavor to distinguish between this trade and its agency for the public, between its banking operations and those qualities which it possesses in common with every corporation, such as individuality, immortality, etc. While they seem to admit the right to preserve this corporation existence, they deny the right to protect it in its trade and business. * * *"

"Let this distinction be considered.

"Why is it that congress can incorporate or create a bank? This question was answered in the case of M'Culloch v. The State of

Maryland. It is an instrument which is 'necessary and proper'
127 for carrying on the fiscal operations of government. Can this instrument, on any rational calculation, effect its object, unless it be endowed with that faculty of lending and dealing in money, which is conferred by its charter? If it can, if it be as competent to the purposes of government without, as with this faculty, there will be much difficulty in sustaining that essential part of the charter. If it cannot, then this faculty is necessary to the legitimate operations of government, and was constitutionally and rightfully engrafted on the institution. It is, in that view of the subject, the vital part of the corporation; it is its soul; and the right to preserve it, originates in the same principle with the right to preserve the skeleton or body which it animates. The distinction between destroying what is denominated the corporate franchise, and destroying its vivifying principle, is precisely as incapable of being maintained, as a distinction between the right to sentence a human being to death, and a right to sentence him to a total privation of sustenance during life. Deprive a bank of its trade and business, which is its sustenance, and its immortality, if it have that property, will be a very useless attribute.

"This distinction, then, has no real existence. To tax its faculties, its trade, and occupation, is to tax the bank itself. To destroy or preserve the one, is to destroy or preserve the other. * * *

"Were the Secretary of the Treasury to be authorized by law to
appoint agencies throughout the Union to perform the public
128 functions of the bank, and to be endowed with its faculties as a necessary auxiliary to those functions, the operations of those agents would be as exempt from the control of the States as the bank and not more so. If, instead of the Secretary of the Treasury, a distinct office were to be created for the purpose filled by a person who should receive, as a compensation for his time, labor, and expense, the profits of the banking business, instead of other emoluments to be drawn from the treasury, which banking business was essential to the operations of the government, would each State in the Union possess a right to control these operations? The question on which this right would depend must always be, are these faculties so essential to the fiscal operations of the government as to authorize congress to confer them? Let this be admitted, and the question, does the right to preserve them exist? must always be answered in the affirmative.

"Congress was of opinion that these faculties were necessary to enable the bank to perform the services which are exacted from it, and for which it was created. This was certainly a question proper for the consideration of the National legislature. But, were it now to undergo revision, who would have the hardihood to say that without the employment of a banking capital, those services could be performed? That the exercise of these faculties greatly facilitates the fiscal operation of the government, is too obvious for controversy;
and who will venture to affirm that the suppression of them
129 would not materially affect those operations, and essentially impair, if not totally destroy, the utility of the machine to

the government? The currency which it circulates by means of its trade with individuals, is believed to make it a more fit instrument for the purposes of government, than it could otherwise be; and, if this is true, the capacity to carry on this trade, is a faculty indispensable to the character and objects of the institution."

Osborn vs. United States Bank, 9 Wheaton 738, 860-864.

If the Supreme Court of the United States ever in any case allowed the State to dictate what funds belonging to a National Bank shall be allowed to be continuously loaned out by a National Bank up to the time of the bank's dissolution, and what funds of that bank shall be taken away from it for the benefit of the State, and thereby preventing a part of its funds from thus being loaned out by such bank, it has never been called to our attention, and we do not believe that any such case can be found. Nevertheless, that is what the State is trying to do in this case, if it claims that Section 1273 of the Code of Civil Procedure is applicable to National Banks as well as to State banks.

As we have already shown, a National Bank is entitled by the express law of the United States, "to receive deposits," and to
130 loan a given percentage thereof without any time being limited during which it is entitled to keep the same loaned, up to the time of its going into liquidation. Up to that time, not a word can be found in any National Bank law, nor in any United States court decisions, (so far as we can discover), that limits in any way the rights of the National Bank to keep such percentage of its deposits loaned out until such dissolution of the bank itself. The deposits, of course, during all that time are subject to be checked out by the party making the deposit or by his legatee or heir. But in case of the death of the depositor, who has never himself made an assignment and who has left no heir or devisee, the State cannot enact a valid law confiscating such deposit to itself, upon the ground that the deposit has not been disturbed in amount for twenty years, or ten years, or five years, or for any other length of time which the State chooses to specify.

Fourth.

Coming now to the dissolution of a National Bank:

Section 5220 of the Revised Statutes states that any "association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock." And Section 5221 of such
131 Revised Statutes provides that notice shall be given by publication describing what the same shall be and for the time during which it shall be made and stating in such publication "that the association is closing up its affairs, and notifying the holders of its notes and other creditors to present the notes and other claims against the association for payment."

It will be noted that it is the creditors of the bank who are to present the notes or other claims. And it will be noted also that under Section 5235 and Section 5236 it is only the claims thus

presented and proven which are to be paid out of the assets of the bank which is in litigation.

This notice is substantially the same as the provisions for the required notice to be given under Section 5234 of the Revised Statutes wherein it is provided that enforced liquidation of the bank shall take place. It may be noted here that it is a matter of general knowledge that nearly all of the cases where an association goes into voluntary liquidation by a vote of its shareholders under Section 5220, the association is unable to further carry on its business by reason of its existing excessive indebtedness; so that to all intents and purposes the provisions of Section 5235 and Section 5236 should apply to the case where the association went into voluntary liquidation under Section 5220.

132 Now in Section 5234, it is provided that the Receiver appointed by the Comptroller shall, under the direction of the Comptroller, "take possession of the books, records and assets of every description of such association" and convert the same into assets of the corporation.

As we have seen, Section 5235 requires notice to be given substantially the same as the notice to be given under Section 5221 where the proceedings are voluntary. Also, as we have seen, Section 5221 says the notice shall be given to "the holders of its notes and other creditors against the association for payment." Whatever rights, if any, that the State should have for escheat, they can not claim on the ground of being a "creditor" of such Bank, such notice to be given "calling on all persons who may have claims against such association to present the same and to make legal proof thereof." It is evident that the parties entitled to participate in making claims against the Bank in liquidation are the same persons whether under the voluntary liquidation under Section 5231, or whether under involuntary liquidation under Section 5235; and as the phraseology in Section 5221 states that the parties to present claims are those who hold the bank's notes and those who are its "other creditors," it is evident that the same parties are meant

133 by the words used in Section 5235 "calling on all persons who may have claims against such association to present the same and to make legal proof thereof:

Section 5236 provides as follows:

"Section 5236. From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the Comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives in proportion to the stock by them respectively held."

Thus we see by Section 5236 that after all the "holders of its notes and other creditors" of the Bank (Section 5221), whose claims have been presented and proved, have been paid out of the total assets of such association, then "the remainder of the proceeds, if any, shall be paid over to the shareholders of such association or their legal representatives in proportion to the stock by them respectively held." In other words, it is the clear intention of the lan-
134 guage of the National Bank Act, which we have quoted, that the National Bank Law covers the whole ground of what shall be done by the National Bank itself, and what shall be done with its assets upon its dissolution,—whether such dissolution is voluntary or involuntary.

As said by the Supreme Court of the United States in a comparatively recent decision, to-wit: in the case of Easton vs. State of Iowa, 23 Sup. Ct. Rep. 288, 188 U. S. 220 (Opening Brief, pages 44-45):

"If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner and in a certain form, it can not be that the state legislatures have a right to interfere, and, as it were, by way of complement to the legislation of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does not do, is as expressive of what its intention is, as the direct provisions made by it."

It seems to be perfectly manifest that the United States by the National Bank Law intended that all deposits which were not paid to the depositor, or to his assignee to whom the depositor him-
135 self made an assignment of his deposit, or to his heirs or legatees, should be for the benefit of the bank itself during the time the bank was in active business, and at its dissolution to be used, first, to pay the holders of its notes and its creditors their full claims and, then, if any balance remained, distribution thereof to be made to its then shareholders in proportion to the amount of the stock owned by each shareholder.

We earnestly request the members of this Court to read the whole opinion in the case above referred to of Easton vs. Iowa from beginning to end, as it makes very full reference to, and quotations from most, if not all, pertinent decisions made theretofore concerning the matters in controversy in this case, and especially from the decisions of the United States Supreme Court.

We also call attention to the case of Robbins vs. Shelby Taxing District, 120 U. S. 489, 493, which states as follows:

"Another established doctrine of this court is that where the power of Congress to regulate is exclusive the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions; and any regula-

tion of the subject by the states, except in matters of local concern only, as hereafter mentioned, is repugnant to such freedom.

This was held by Mr. Justice Johnson in Gibbons v. Ogden, 9
136 Wheat. 1, 222, by Mr. Justice Grier in the Passenger Cases, 7 How. 283, 462, and has been affirmed in subsequent cases. State Freight Tax Cases, 15 Wall. 232, 279; Railroad Co. v. Husen, 95 U. S. 465, 469; Welton v. Missouri, 91 U. S. 275, 282; Mobile v. Kimball, 102 U. S. 691, 697; Brown v. Houston, 114 U. S. 622, 631; Walling v. Michigan, 116 U. S. 446, 455; Pickard v. Pullman Southern Car Co., 117 U. S. 34; Wabash etc. Railway Co. v. Illinois, 118 U. S. 557."

Also from the decision made at the very last session of the United States Supreme Court in the case of Pennsylvania R. R. Co. vs. Public Service Commission, 40 Sup. Ct. Rep. 36-37, from which we quote as follows:

"But when the United States has exercised its exclusive power over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements that they can annul them. Southern Ry. Co. v. Railroad Commission of Indiana, 236 U. S. 439, 466, 35 Sup. Ct. 304, 59 L. Ed. 661; Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co., 237 U. S. 597, 604, 35 Sup. Ct. 715, 59 L. Ed. 1137, Ann. Cas. 1916D, 333; New York Central R. R. Co. vs. Winfield, 244 U. S. 147, 37 Sup. Ct. 546, 57 L. Ed. 1045, L. R. A. 1918C, 439, Ann. Cas. 1917D, 1139."

We wish to quote from a few of the propositions laid
137 down by the Supreme Court of the United States in the case already referred to, Easton vs. State of Iowa, 23 Sup. Ct. Rep. 288, 290-294, 188 U. S. 220. That decision quotes with approval from former decisions of the Supreme Court of the United States and also itself states as follows, viz:

"We consider that act as constituting by itself a complete system for the establishment and government of national banks. * * * Everything essential to the formation of the banks, the issue, security and redemption of their notes, the winding up of the institutions and distribution of their assets are fully provided for."

Again:

"We think that this view of the subject is not based upon a correct conception of the Federal legislation creating and regulating national banks. That legislation has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the states."

Again:

"Such being the nature of these national institutions, it must be obvious that their operations can not be limited or controlled by

state legislation, and the Supreme Court of Iowa was in error
138 when it held that national banks are organized and their business prosecuted for private gain, and that there is no reason why the officers should be exempt from the penalties prescribed for fraudulent banking. * * * It will be sufficient to say that banks organized under the National Bank Act are authorized * * * to exercise by its board of directors, or duly authorizezd officers, all such incidental powers as shall be necessary to carry on the business of banking * * * by receiving deposits * * * by loaning money * * * to report to the treasurer of the United States twice each year the average amount of its deposits and to pay such treasurer each half year a tax upon such deposits. * * * It thus appears that Congress has provided a symmetrical and complete scheme for the banks to be organized under the provisions of the Statute."

Again quoting with approval from another court, it says:

"But we are unable to perceive that Congress intended to leave the field open for the states to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and confusion would necessarily result from control possessed and exercised by two independent authorities."

Again:

"The Act of 1864, if applied to national banks, imposes a
139 disqualification upon cashiers of such institutions where none has been imposed by act of Congress. If the State can impose one qualification upon the cashiers, why not another? If upon the cashier, why not upon the president or other officer? Nay, further, suppose the legislation should declare that no person should be a bank director unless he has arrived at fifty years of age, or should be the owner of one hundred shares of stock, could we apply such an act to National banks? If so, such institutions would have a precarious existence. They would be liable to be interfered with at every step, and it might not be long before the whole national banking system would have to be thrown aside as so much worthless lumber."

Again:

"The States can exercise no control over them (National banks), nor in anywise affect their operation, except in so far as Congress may see proper to permit. Anything beyond this is an abuse, because it is the usurpation of power which a single State can not give. The States have no power by taxation or otherwise * * * to burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers, vested in the general government."

We submit that the right retained by the United States government to collect a given revenue undiminished by any State legislation, and the right of the bank itself to the use of the money
140 during the life of such bank, and the rights of its depositors to have their money paid from any uncalled for deposits, and the right that if any surplus should still exist, that if such depositors were paid, the stockholders of the bank should receive a pro rata, can not be destroyed by any state legislation.

We respectfully ask that a rehearing be granted in this case.

LIEB & LIEB,
Attorneys for Petitioner, The First National Bank of San Jose.

141 In Bank.

Sac., No. 3215.

STATE OF CALIFORNIA

vs.

ANGLO AND LONDON PARIS NATIONAL BK., etc., et al.

By the COURT:

Rehearing denied September 26, 1921. (All concur except Shaw, J. absent.)

(Endorsed:) Filed Sept. 27, 1921. B. Grant Taylor, Clerk, by Tyler.

142 In the Supreme Court of the State of California, Bank.

Sacramento, No. 3215.

STATE OF CALIFORNIA, Plaintiff, Respondent,

vs.

ANGLO AND LONDON PARIS NATIONAL BANK OF SAN FRANCISCO et al., Defendants; First National Bank of San Jose, Defendant, Appellant.

On Appeal from the Superior Court in and for the County of Sacramento.

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is Ordered, Adjudged, and Decreed by the Court that the Judgment of the Superior Court in and for the County of Sacramento in the above entitled cause, be and the same is hereby affirmed. Respondent to recover costs of appeal.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 29th day of August 1921, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 29th day of September, A. D. 1912.

[SEAL.] B. GRANT TAYLOR,
Clerk,
By HARRIET P. TAYLOR,
Deputy.

143 In the Supreme Court of the State of California.

THE FIRST NATIONAL BANK OF SAN JOSE, Plaintiff in Error,

vs.

THE STATE OF CALIFORNIA, Defendant in Error.

Petition for Writ of Error.

The First National Bank of San Jose, plaintiff and petitioner for writ of error, to the Honorable Lucien Shaw, Chief Justice of the Supreme Court of the State of California:

The petition of the First National Bank of San Jose, the plaintiff and petitioner in the petition for a writ of error, as hereinafter stated, respectfully shows; That the said petitioner is and at all times hereinafter mentioned was a National Bank formed and existing under the National Bank laws of the United States.

That on November 10, A. D. 1880, there was deposited in said First National Bank of San Jose a deposit of the sum of $1,192.25 by P. A. Campbell.

That thereby said First National Bank of San Jose became the owner of said money so deposited and thereby said Bank became indebted to the said P. A. Campbell for the payment of the same when checked out by him or his assignee or by his executor or administrator.

That there was not at that time any law of the State of California purporting to escheat any part of such deposit to the State of
144 California under any circumstances whatever, nor was there ever any such law until more than thirty years thereafter, as hereinafter stated.

That in the year 1915, a new section to wit: section 1273, was added by the legislature of California to the Code of Civil Procedure of the State of California.

That said section 1273, was enacted by the said legislature on June 3d, in the year 1915 and went into effect on August 8th, 1915, and is found in the said Code of Civil Procedure of the State of California; and is also found in the Statutes of the State of California for 1915 at page 107. Said section reads as follows:

"Unclaimed Bank Deposits Escheat to State.—All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, escheat to the state. Whenever the attorney general shall be informed of such deposits, he shall commence an action or actions in the name of the State of California, in the superior court for the county of Sacramento, in which shall be joined as parties the bank or banks in which the moneys are deposited and the names of all such depositors. All or any number of depositors or banks may be included in one action.

"Service of process in such action or actions shall be made by delivery of a copy of the complaint and summons to the president, cashier or managing officer of each defendant bank, and by publication of a copy of such summons in a newspaper of general circulation published in said county for a period of four weeks. Upon the trial the court must hear all parties who have appeared therein and if it be determined that the moneys deposited in any defendant bank or banks are unclaimed as hereinabove stated, then the court must render judgment in favor of the state declaring that said moneys have escheated to the state and commanding said bank or banks to forthwith deposit all such moneys with the state treasurer, to be received, invested, accounted for and paid out in the same manner and by the same officers as is provided in the case of other escheated property."

145 That Section 15 of what was then and yet is known as the "Bank Act" of California, was amended in 1915, and also went into effect on August 8th, 1915, and is found in Statutes of California of 1915 on page 1106, and reads as follows:

"Sec. 15. All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence shall, with the increase and proceeds thereof, be deposited with the state treasurer after judgment in the manner provided in the Code of Civil Procedure. At the time of issuing the summons in the action provided for in section 1273 of the Code of Civil Procedure, the clerk shall also issue a notice signed by him, giving the title and number of said action, and referring to the complaint therein, and directed to all persons, other than those named as defendants therein, claiming any interest in any deposit mentioned in said complaint, and requiring them to appear within sixty days

after the first publication of such summons, and show cause, if any they have, why the moneys involved in said action should not be deposited with the state treasurer as in said section provided, and notifying them that if they do not so appear and show cause, the state will apply to the court for the relief demanded in the complaint. A copy of said notice shall be attached to and published with the copy of said summons required to be published by said section, and at the end of the copy of such notice so published there shall be a statement of the date of the first publication of said summons and notice. Any person interested may appear in said action and become a party thereto. Upon the completion of the publication of the summons and notice, and the service of the summons on the defendant bank, or banks as in said section 1273 of the Code of Civil Procedure provided, the court shall have full and complete jurisdiction over the state, and the said deposits and of the person of everyone having or claiming any interest in the said deposits, or any of them, and shall have full and complete jurisdiction to hear and determine the issues therein, and render the appropriate judgment thereon. The president or managing officer of every bank must, within fifteen days after the first day of January of every year, return to the superintendent of banks and to the state controller a sworn statement showing the names of depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding twenty years. Such statement shall show in detail the following matters, viz:

"First. The name and last known place of residence or post office address of the person making such deposit;

"Second. The amount and date of such deposit and whether the same are in moneys or securities, and if the latter, the nature of the same;

146 "Third. The interest due on such deposit, if any and the amount thereof;

"Fourth. The sum total of such deposit, together with the interest added thereto due from such bank on account of such deposit or deposits and the interest thereon to such depositor, but nothing contained herein shall require any corporation or person renting lock boxes or safes in vaults for storage purposes to open or report concerning property stored therein. Such reports itemized as aforesaid shall be signed by the person making the same and shall be sworn to before a person competent to administer oaths as a full, complete and truthful statement of each of the items therein contained.

"The president or managing officer of every bank must, within fifteen days after the first day of January of every odd numbered year, return to the superintendent of banks a sworn statement showing the names of depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding ten years. Such statements shall show the amount of the account,

the depositor's last known place of residence or post office address, and the fact of death, if known to such president or managing officer. Such president or managing officer must give notice of these deposits in one or more newspapers published in or nearest to the town or city where such bank has its principal place of business, at least once a week for four consecutive weeks, the cost of such publication to be paid pro rata out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the president or managing officer to be living. The superintendent of banks must incorporate in his subsequent report such returns made to him as provided in this section. If any president or managing officer of any bank neglects or refuses to make the sworn statements required by this section such bank shall forfeit to the State of California the sum of one hundred dollars a day for each day such default shall continue. Any president or managing officer of any bank who violates any of the provisions of this section shall forfeit to the State of California the sum of one hundred dollars a day for each and every day such violation shall continue. For the purposes of this section all deposits received by any bank under the provision of section thirty-one or section thirty-one *a* of this act shall be deemed to have been deposited with such bank at the time the deposit was made with the bank from which the deposit was transferred; provided, that any bank which shall make any deposit with the state treasurer in conformity with the provisions of this section shall not thereafter be liable to any person for the same and any action which may be brought by any person against any bank for moneys so deposited with the state treasurer shall be defended by the attorney general without cost to such bank."

That an action was brought by the State of California as plaintiff against the Anglo London, Paris National Bank, The First National Bank of San Jose, et al., as defendants, and was brought under and in pursuance of such sections 1273 and 15 and this petition
147 is to obtain a writ of error to have the judgment rendered by the Supreme Court of California in that action reviewed by the Supreme Court of the United States.

And the said First National Bank of San Jose further shows that in neither of said sections 1273 and 15 was it stated that either of them was intended to apply to National Banks, but the Superior Court of Sacramento County in the State of California, in which said action brought by said state was brought and tried, held and decided in its judgment against said defendant in said action that those sections did apply to National Banks, and the District Court of Appeal of the Third Appellate District of the State of California on appeal from such judgment, and the Supreme Court of California upon its hearing and decision had and made after the hearing and judgment of said District Court of Appeal, each held that said Section 1273 and said Section 15 was intended to and did apply to National Banks as well as to State Banks and were valid laws as to the deposits therein mentioned even as to such deposits that were deposited in national banks of the United States.

The said First National Bank of San Jose, in its demurrer and answer filed in said action brought by said state, and in its briefs and arguments in said action while such action was pending in the Superior Court of Sacramento County, in said District Court of Appeal, on the appeal of said First National Bank from the judgment entered against it by said Superior Court, in the Supreme Court of California, and in its petition filed for hearing and decision of the case in said Supreme Court, (which petition was granted) and in its petition filed in the Supreme Court of California praying that said Supreme Court grant a rehearing, (which rehearing was
148 denied), made and urged the following points, and now does make and urge the following points, viz:

First. That the matter of the regulation of Bank deposits in the national banks of the United —, cannot be legally made by the State of California as was attempted by said sections 1273 and 15 of the said "Bank Act," or at all, but is exclusively and only to be considered, determined, exercised and made by the Congress of the United States of America and could not under any circumstances be exercised or made by the legislature of the State of California, and said attempted regulation by said section 1273 of the Code of Civil Procedure of California conflicts with, and is repugnant to, the regulations by such congress concerning such deposits, and hence said section 1273 and said section 15 as to deposits in national banks, are, and each of them are, null and void.

Second. That before the passage of either of said two sections, the United States, by its National Bank law, had already regulated the matter of the right of the National Banks to the deposits made or to be made in such national banks of the United States and the attempted regulation of the rights of such national bank to such deposits by the State of California by said sections 1273 and 11, and each of them was and is repugnant to and in conflict with such regulations of congress, as will hereafter be more specifically pointed out; and said State of California was, and always has been, without any power or authority to, in any way, regulate such deposits, and said State was, and always has been, without any power or authority to determine that any deposit in a National Bank should not remain unchanged in amount in the United States National Banks for a period of 20 years, or 10 years or 5 years, or for any other
149 period of time which the State might choose to designate and such state could not enact a valid law which would provide that a deposit which was undisturbed for 20 years should for that reason or for any other reason or reasons specified in said section 1273, escheat to said State of California.

Third. That the complaint did not in said action and does not, state facts sufficient to constitute a cause of action.

Fourth. That it does not appear by the complaint herein that any law had ever been passed by the State which, by its terms, purported to provide for an escheat of a deposit made in a national bank or which, by its terms purported to authorize such state to claim any

deposit in said National Bank by reason of any fact or facts alleged in the complaint.

Fifth. That if such law is intended by the State to apply to National Banks then such claim was repugnant to the provision of Chapter 1 of Title 62 of the Revised Statutes of the United States with reference to deposits made in national banks, and particularly as to the rights given to national banks as to all deposits made therein and particularly as to the rights given to such national banks to such deposits by sections 5136 subdivision Seventh, and sections 5191, 5215, 5220, 5221, 5234, 5235 and 5236 of the Revised Statute of the United States.

Sixth. That if it is claimed by the State of California in said action that it is entitled to a judgment or decree for the custody or ownership of the deposit in the First National Bank of San Jose mentioned in its complaint in this action, then said claim is invalid, illegal, null and void, for the following, among other reasons, namely:

1st. If said State should be allowed to take the deposit mentioned in said complaint from said First National Bank of San Jose
150 and to convert the same to its own use, and if, upon the dissolution of such bank, no claim was made by the party making the deposit or his assignee or representative, then in case it should be necessary to use such deposit under the provisions of Section 5236 of the said Revised Statutes of the United States for the purpose of paying the claims against said Bank which were presented and proved in conformity with the notice to the creditors requiring them to present and prove their claims, or for the purpose of destributing the same or any part thereof to the shareholders of said bank, as provided by said section 5236 of said Revised Statutes, it would be impossible to do so, since the state would have already converted the same to its own use under the provisions of said Section 1273. Said section 1273 is therefore absolutely repugnant to said sections 5220, 5221, 5234, 5235 and 5236 of said Revised Statutes and hence it is absolutely void.

2nd. Congress, by section 5236 of such Revised Statutes plainly determines the question of what shall be the precise rights of the National Banks in and to their own deposits. Subdivision "Seventh" of Section 5136 gives the right to a National Bank as being a part of the "incidental powers" of said national banks of "receiving deposits" and of "loaning money." Section 5191 expressly regulates the percentage of its deposits which the national bank shall keep unloaned, for its own protection.

This is a direct determination of how much of its deposits it shall not loan, and it is the only restriction against its banks from loaning all their deposits. Such banks are therefore given the rights to loan and keep loaned, all their deposits which are left after deducting the percentage of their entire deposits, as required by said
151 section 5136 to be kept unloaned. For a state to attempt to change the percentage of the deposits which the United States

says shall be kept unloaned, or for the state to attempt to prevent the National Bank from loaning, or keeping loaned, all the balance of the deposit and collecting the income arising therefrom is repugnant to such laws of the United States and is therefore absolutely void.

3rd. The United States having exercised its exclusive powers in designating what shall be the rights of the National Banks in reference to the percentage of their deposits which they must keep unloaned and thereby having necessarily fixed the balance of the percentage which they may loan, and keep loaned, with the right to receive the interest or income arising thereon, has exercised its power in that matter "so far as to take possession of the field," and therefore "the state no more can supplement its requirements, than they can annul them." This is the latest expression of the Supreme Court of the United States in a case similar to the instant case. Therefore the National banks can, under the National Banking laws, keep the remaining percentage of its deposits drawing interest for the benefit of the National banks that own such deposits, and said sections 1273 and 15 are in that regard, repugnant to the National Banking laws and are therefore void.

4th. The United States imposes an annual tax, in its own favor, on the National banks, payable by each National Bank at the rate of one half of one per cent of all its deposits.

The absorption of any part of such deposits by the state would therefore be clearly repugnant to the terms of such laws, (which is contained in Section 5214 and Section 5215 of the Revised Statutes), since it would directly lessen and deplete the revenue of the
152 United States. Said Sections 1273 and 15 being plainly repugnant to the provisions of said sections 5215, are therefore void.

Seventh. That all the deposits ever received by said First National Bank of San Jose, including the deposit for which it is sued in this action were received and always held by said bank by reason of the laws of the United States and not otherwise.

Eighth. That such deposits upon being made became the property and part of the assets of said First National Bank of San Jose with the right and obligation to use the same under Sections 5220, 5221, 5234, 5235, and 5236 of the Revised Statutes of the United States if, upon the dissolution of the said Bank, no claim was made therefor by the depositor or his assignee, executor or administrator, to pay therewith liabilities then existing against it, and if not needed for that purpose then to pay the same pro rata to its then stockholders.

Ninth. That upon such deposit being made with said Bank the said deposits became the property and assets of said Bank and thereby the said bank became indebted to said depositor for that amount of money to be paid out by the check of himself or his assignee, executor

or administrator; and that the said state had no right to transfer to itself the ownership of said indebtedness in the absence of any law of the United States permitting it so to do: and that no such law of the United States has ever been enacted.

Tenth. That no escheat could ever result other than to the sovereign State or sovereign Nation under whose laws it had come into existence and that said deposit did not come into existance under any law of the State but wholly and entirely under the laws of the United States.

153 Eleventh. That no law for over 30 years after such deposit was made was ever passed by the State of California purporting to escheat or to have any right to escheat any deposit made in a National Bank of the United States or that any depositor or his assignee or his heirs, executors or administrators should once in every 20 years change the amount of such deposit or give a written notice of the residence of such depositor or his successor in interest to the Bank or that any of such things should be done at any time.

Twelfth. That if the State claimed that said laws made by it concerning the escheat of deposits applied to deposits in National Banks of the United States then such laws are null and void as to such National banks as being in conflict with and repugnant to the laws of the United States.

Thirteenth. That if the said State claimed that such laws passed by it were intended to apply to National Banks of the United States then such laws are null and void as attempting to deprive such defendant of its property and property rights without due process of law and contrary to the Fourteenth Amendment of the Constitution of the United States.

Fourteenth. That if such act or acts of such State was intended by said State to apply to deposits in National Banks, then the same are contrary and repugnant to the provisions of Section 10 of Article 1 of the Constitution of the United States by attempting to impair the obligation of the contract made by the defendant, the First National Bank of San Jose, and its depositor who made such deposits, in this that the making of such deposit by the depositor and the acceptance of such deposit by the bank constituted in law a contract by which that said Bank agreed that, on proper demand being
154 made therefor by such depositor, or his assignee, or his executor or administrator, said Bank would pay to such depositor or to his assignee, executor or administrator an amount equal to the amount of said deposit, but that if the same was never so demanded, then said defendant should have the right, and it should be its duty upon the dissolution of such bank, to pay so much of the amount of such deposit which was then unclaimed by such depositor or his assignee, or executor or administrator as would be necessary to satisfy such other indebtedness of such bank as was then presented and proved or adjudicated as required by the provisions of sections 5220, 5221, 5234, 5235, and 5236, of the Revised Statutes of the United

States, and thereupon to pay the remaining part of such unclaimed deposits, if any such remaining part there might be, to the shareholders of such bank pro rata, according to their respective ownership of the shares of such bank, as required by the Revised Statutes of the United States, and especially as required by Sections 5220, 5221, 5234, 5235 and 5236 of such Revised Statutes, and that in the meantime until such demand of payment was made by said depositor, or his assignee, executor or administrator, the said Bank might keep such portion of said deposit loaned out as the laws of the United States might permit and to have the right to collect and keep all the interest arising from such loans, to all of which said depositor was by the laws of the United States deemed to have agreed by reason of its making such deposit.

That the said Supreme Court of the State of California in rendering its decision in this case, decided that none of said claims made by the said First National Bank of San Jose, defendant in such case as aforesaid, prevented said section 1273 of the Code of Civil Procedure of the State of California or Section 15 of said Bank Act from being valid laws as to the deposits made in National Banks and decided and adjudged that such Section 1273 and said Section 15 of said Bank Act were valid and gave judgment on August 29, 1921, enforcing said sections and each of them against said Bank. Whereupon and before such judgment became final, said Bank on September 14, 1921, filed its petition with said Supreme Court that a rehearing in such case be granted but said petition for a rehearing was denied by order of said Supreme court dated September 26, 1921, which order was filed in the clerk's office on September 27, 1921. An assignment of errors of your petitioner is herewith presented and exhibited.

155 & 156

Wherefore the said defendant, the First National Bank of San Jose, prays that a writ of error be allowed returnable into the Supreme Court of the United States and for the issuance of a citation to the above named defendant in error and that a transcript of the record proceedings and papers upon which said judgment was rendered, duly authenticated, be sent to the Supreme Court of the United States in compliance with the rules of said Court in such cases made and provided and for such other and further relief as may be proper in the premises.

S. F. LEIB &
LEIB & LEIB,
Attorneys for Petitioner.

Upon reading the foregoing petition of The First National Bank of San Jose, a defendant in the above entitled cause, it is ordered that a writ of error issue, as therein prayed, upon the execution of a bond by said petitioner to The State of California, in the sum of Twenty-five Hundred Dollars, such bond when approved to act as a super-sed-as.

Dated December 21, 1921.

LUCIEN SHAW,
Chief Justice of the Supreme Court of the State of California.

157 [Endorsed:] Sac., 3215. The First National Bank of San Jose, Plff. in Error, vs. The State of California, Deft. in Error. Petition for Writ of Error and allowance of same and order fixing bond. Filed Dec. 28, 1921. B. Grant Taylor, Clerk, by Erb, Deputy.

158 In the Supreme Court of the United States.

THE FIRST NATIONAL BANK OF SAN JOSE, Plaintiff in Error,

vs.

THE STATE OF CALIFORNIA, Defendant in Error.

Assignment of Errors.

Now comes the First National Bank of San Jose, the petitioner and plaintiff in error in the above entitled cause and says as follows:

Said First National Bank of San Jose was one of the defendants in the case of the State of California, Plaintiff, vs. Anglo & London, Paris National Bank of San Francisco, The First National Bank of San Jose, et al., Defendants, in which action so far as it was against the First National Bank of San Jose, judgment was rendered against said First National Bank of San Jose on August 29, 1921, by the Supreme Court of California, said action against said First National Bank of San Jose being numbered in said Supreme Court as Sacramento No. 3215.

Said First National Bank of San Jose, within the time allowed by law after the rendering of such judgment against it by said Supreme Court, filed its petition with the clerk of said Supreme Court asking such Supreme Court to grant it a rehearing and to set aside such judgment. Such petition for such rehearing was denied by said Supreme Court of California on September 26, 1921.

159 Said petitioner now files its petition that a writ of error be issued by the Supreme Court of the United States to said Supreme Court of the State of California in order that the correctness or the incorrectness of the judgment of the Supreme Court of California may be reviewed and determined by said Supreme Court of the United States, and that the said judgment of the Supreme Court of California rendered against it as aforesaid be reversed and set aside by said Supreme Court of the United States.

The said petitioner, The First National Bank of San Jose, now makes its following assignments of error committed by the said Supreme Court of California in rendering said judgment against it as hereinbefore stated.

I.

The Supreme Court of California erred in holding and deciding that the provisions in Section 1273 of the Code of Civil Procedure of the State of California and of Section 15 of the "Bank Act" of California, which sections purport to escheat to the State of California those certain deposits made in banks specified in said sections,

were valid laws and that they were not repugnant to the laws of the United States as to all deposits made in any national bank or banks in the United States.

II.

Said Court erred in holding and deciding that said provisions in said sections 1273 and 15 were valid laws as to the deposits specified in said sections 1273 and 15 and in holding and deciding that said sections 1273 and 15 repealed and set aside the provisions of sections 5214 and 5215 of the Revised Statutes of the United States, for the reason that said sections of said Revised Statutes gave a revenue of one-half of one per cent per annum on said deposits made in national banks and which said sections 1273 and 15 purported to escheat to the State of California, and to thereby wipe out of existence said sections 5214 and 5215 of said Revised Statutes.

160

III.

Said Court erred in holding and deciding that subdivision 7 of section 5136 of said Revised Statutes did not give to the national banks the right to receive deposits and to loan and to reloan and to keep loaned the money received by said banks as deposits, for as long a time as the depositor making such deposit, or his assignees, executors or administrators chose to let such deposits so made by them remain on deposit, with no limitation on the amount of such deposits being loaned, except so far as the United States, by its laws, should prescribe.

IV.

Said Court erred in holding and deciding that section 5191 and subdivision 7 of section 5136 of said Revised Statutes, taken and read together, did not provide or does not provide that the First National Bank of San Jose was given the right to loan and keep loaning all its deposits, except 15 per cent thereof, and in holding and deciding that said bank was not given by said sections the right to collect all the revenues arising from its loaning the remaining 85 per cent of its deposits, including the 85 per cent of the $1,192.15 deposited by P. A. Campbell.

V.

Said Court erred in holding and deciding that said First National Bank of San Jose did not have the right under such Revised Statutes to keep the deposit made with it by P. A. Campbell of $1,192.25, mentioned in the Complaint filed by the State of California against said First National Bank of San Jose, as long as either the said P. A. Campbell or his assignee, executor or administrator should choose to leave it on deposit and should have the right to the use thereof and the revenue arising therefrom until the dissolution of said bank unless before that time it had been drawn out by said depositor or his assignee, executor or administrator.

161

VI.

Said Court erred in holding and deciding that if, when said bank should be dissolved and after it had given the notice to all claimants to present their claims as required by sections 5221 and 5235, no such claim was presented for said deposit made by said P. A. Campbell or his assignee, executor or administrator, said deposit could not be used for the payment of the debts then existing against said bank and if not needed for that purpose that it could not be used in distributing the same among the shareholders of such bank, as provided by said section 5236 could and should be done by said bank.

VII.

Said Court erred in holding and deciding that the United States had not in the National Bank laws provided a complete scheme or plan for the management of the affairs of a national bank from the commencement of said bank to its dissolution, and erred in holding and deciding that the State could intervene and ignore the laws of the United States made for the complete and entire management of its own banks during their entire life and ignore such laws of the United States by enacting said section 1273 and
162 15 which are and would be entirely repugnant to such laws of the United States made by the United States even to the extent of setting such laws of the United States aside and actually seizing the money belonging to said banks and thereby lessening the revenue of the United States and taking the property belonging to said banks and its stockholders which the United States law declared should be used by such banks in excess of 15 percent thereof in loaning the same and enjoying the benefit and income arising therefrom until the dissolution of the bank and then used for the payment of the debts of the Bank, if needed for that purpose, and if not so needed then to be divided among the shareholders of the bank, to which said money belonged and not to the State.

VIII.

Said Court erred in holding and deciding that the United States had not entered a field by making laws governing the managing and ownership of deposits made in its national banks and in holding and deciding that the State could enter that field and manage and govern the ownership of said deposits of said national banks.

IX.

Said Court erred in holding and deciding that the complaint filed in said action brought by the State of California against said First National Bank of San Jose stated facts sufficient to constitute a cause of action against said bank.

X.

Said Court erred in holding and deciding that an enforcement of said sections 1273 and 15 passed by said State, would not be depriving national banks of property belonging to them without due process of law towit: of depriving them of their ownership of deposits owned by them contrary to the Fourteenth Amendment of the Constitution of the United States that no State shall deprive any person of property without due process of law.

XI.

Said Court erred in holding and deciding that an enforcement of said sections 1273 and 15 would not be impairing the obligation of the contract entered into by P. A. Campbell when making such deposit of $1,192.25 at said First National Bank of San Jose, and made and entered by said First National Bank of San Jose when it received said deposit, said contract being that said deposit, until drawn out by such depositor or by his assignee, executor or administrator, should be used and loaned by said bank to the extent allowed and as prescribed by the national banking laws of the United States, and if not so drawn out before the dissolution of such bank, the depositor or his assignee or executor or administrator could then make claim for and receive the same, and if no such claim was then made for the same by such depositor or by his assignee, or executor or administrator that said bank should then use the same as prescribed by sections 5220, 5221, 5234, 5235 and 5236 of the Revised Statutes of the United States as such sections prescribed and directed that such unclaimed deposits should then be used.

For the errors aforesaid, the petitioner, The First National Bank of San Jose, prays that the final judgment of the Supreme Court of the State of California made and entered against your petitioner, The First National Bank of San Jose, on August 29, 1921, be reversed by the Supreme Court of the United States and that a judgment be rendered in favor of your petitioner with costs.

S. F. LEIB,
LEIB & LEIB,
Attorneys for Petitioner.

The above entitled matter coming on to be heard upon the petition of the plaintiff in error therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of California, and upon examination of said petition and the records in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter;

It is ordered that a writ of error be, and is hereby, allowed to this court from the Supreme Court of the United States, and that the

bond presented by said petitioner be, and the same is hereby approved.

LUCIEN SHAW,
Chief Justice of the Supreme Court of the State of California.

165 [Endorsed:] Sac., 3215. The First National Bank of San Jose, Pl'tff in Error, v. The State of California, Def't in Error. Assignment of Error. Filed Dec. 28, 1921. B. Grant Taylor, Clerk. By Erb., Deputy.

166 Copy.

Bond and Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of California.

THE FIRST NATIONAL BANK OF SAN JOSE, Plaintiff in Error,

vs.

THE STATE OF CALIFORNIA, Defendant in Error.

Bond for Writ of Error.

Know all men by these presents: That we, The First National Bank of San Jose, as principal and A. E. Holmes and W. C. Andrews as sureties, are held and firmly bound unto the State of California in the sum of Twenty-five Hundred Dollars, to be paid to the said obligee, to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 21st day of December, A. D. 1921.

Whereas the above named plaintiff in error hath prosecuted or is prosecuting a writ of error in the Supreme Court of the United States to reverse the judgment rendered against it by the Supreme Court of the State of California in the action of the State of California vs. The First National Bank of San Jose, et al.

Now, therefore, the condition of this obligation is such that
167 if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

THE FIRST NATIONAL BANK OF SAN JOSE,
By W. S. CLAYTON,
Its President.
By PAUL RUDOLPH,
Its Cashier and ex Officio Secretary.
W. C. ANDREWS.
A. E. HOLMES.

Signed, Sealed and delivered in the presence of
R. C. LEIB.

I hereby approve the foregoing bond and sureties this 21st day of December 1921, the same to operate as a supersedeas.

LUCIEN SHAW,
Chief Justice of the Supreme Court
of the State of California.

168 [Endorsed:] Sac., 3215. The First National Bank of San Jose, Pltff. in Error, vs. The State of California, Deft. in Error. Bond for Writ of Error. Filed Dec. 28, 1921. B. Grant Taylor, Clerk, by Erb., Deputy.

169 Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Justices of the Supreme Court of the State of California, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is before you, decided on the 29th day of August 1921 between the State of California, therein designated plaintiff and respondent, and The First National Bank of San Jose, therein designated as defendant and appellant, suit being designated as Sacramento No. 3215, being the highest Court of said State in which a decision in said suit could be had, a manifest error has happened to the great damage of said defendant and appellant, as by its complaint appears.

We, being willing that error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington, D. C., and filed in the office of the Clerk of the Supreme Court of the United States on or before sixty (60) days from date hereof, to the end that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Jus-
170 & 171 tice of the Supreme Court of the United States, this 21st day of December, 1921.

Done in the City of San Francisco, with the seal of the Southern Division of the District Court of the United States for the Northern District of California attached.

[Seal of the U. S. District Court, Northern District of California.]

WALTER B. MALING,
Clerk of the United States District Court in and for the Northern District of California,
By J. A. SCHAERTZER,
Deputy Clerk.

Allowed this 21st day of December, 1921.

LUCIEN SHAW,
Chief Justice of the Supreme Court of the State of California.

172 [Endorsed:] Sac., 3215. The First National Bank of San Jose, Plff. in error, vs. The State of California, Deft. in Error Writ of Error. Filed Dec. 28, 1921. B. Grant Taylor, Clerk, by Erb., Deputy.

173 & 174 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the State of California and to U. S. Webb, the Attorney General of said State, and Frank L. Guerena, the Deputy Attorney General of said State:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within sixty (60) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the State of California wherein the First National Bank of San Jose is plaintiff in error and said State of California is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William H Taft, the Chief Justice of the Supreme Court of the United States, this 21st day of December, in the year of our Lord One Thousand Nine Hundred and Twenty-one.

LUCIEN SHAW,
Chief Justice of the Supreme Court of the State of California.

Copy of the within citation received this 21st day of December, A. D. 1921, at the office of the attorney general of the State of California.

W. S. WEBB,
Attorney General.
FRANK L. GUERENA,
Deputy Attorney General.

175 [Endorsed:] Sac., 3215. The First National Bank of San Jose, Plaintiff in Error vs. The State of California, Defendant in Error. Citation. Filed Dec. 28, 1921 B. Grant Taylor, Clerk, by Erb, Deputy.

176 In the Supreme Court of the United States.

THE FIRST NATIONAL BANK OF SAN JOSE Plaintiff in Error,

vs.

STATE OF CALIFORNIA, Defendant in Error.

Stipulation.

Pursuant to Subdivision 1 of Rule 8 of the Rules of the Supreme Court of the United States, the above named Plaintiff in Error and the above named Defendant in Error by their respective counsel do hereby agree and stipulate that the following shall constitute the transcript of record on Writ of Error in the above entitled action, viz:

Copy of Transcript filed in District Court of Appeal.
Copy of Petition for Hearing in the Supreme Court after decision in the District Court of Appeal.
Order Granting Petition for Hearing.
Decision of the Supreme Court.
Petition for Rehearing in the Supreme Court.
Order Denying Petition for Rehearing.
Judgment.
Original Petition for Writ of Error with Order Granting the Same.
Copy of Assignment of Errors
Copy of Bond with Approval.
Original Writ of Error.
177 & 178 Original Citation.

Dated this January 28th, 1922.

S. F. LEIB,
Attorney and Counsel for the First National Bank of San Jose, Plaintiff in Error.
U. S. WEBB,
Attorney General;
FRANK E. GUERENA,
Deputy Attorney General,
Counsel and Attorneys for the State of California, Defendant in Error.

Endorsed: Filed Jan. 31, 1922. B. Grant Taylor, Clerk, by B Grant Taylor.

179 [Endorsed:] No. —. California Supreme Court. The First National Bank of San Jose, Plaintiff in Error vs. State of California, Defendant in Error. Stipulation as to Record on Writ of Error.

180 In the Supreme Court of the State of California.

Sac., 3215.

STATE OF CALIFORNIA, Plaintiff and Respondent,

vs.

ANGLO & LONDON PARIS NATIONAL BANK OF SAN FRANCISCO et al., Defendants; The First National Bank of San Jose, Defendant and Appellant.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, pursuant to the requirements of the writ of error hereunto attached, do hereby certify that the foregoing constitute the record and proceedings thereunder, consisting of the following documents, to wit:

Copy of transcript;
Copy of petition for hearing in the Supreme Court after decision in the District Court of Appeal;
Order granting petition for hearing;
Decision of the Supreme Court;
Petition for rehearing in the Supreme Court;
Order denying petition for rehearing;
Judgment
Original petition for writ of error with order granting the same;
Copy of assignment of errors;
Copy of bond with approval;
Original writ of error;
Original citation.

I further certify that the copies aforementioned and hereunto attached are full, true and correct copies of the originals thereof on file in my office.

Witness my hand and the seal of this court, this 27th day of January, A. D. 1922.

[Seal Supreme Court of California.]

B. GRANT TAYLOR,
Clerk of the Supreme Court of the State of California.

Endorsed on cover: File No. 28,725. California Supreme Court. Term No. 770. The First National Bank of San Jose, plaintiff in error, vs. The State of California and U. S. Webb, attorney general et al. Filed February 23d, 1922. File No. 28,725.

MAR 24 1923
WM. R. STANSBURY

No. 276

OCTOBER TERM, 1922.

IN THE

SUPREME COURT OF THE UNITED STATES

THE FIRST NATIONAL BANK OF SAN JOSE,
Plaintiff in Error,

vs.

STATE OF CALIFORNIA,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

U. S. WEBB, Attorney General of the State of California,

FRANK L. GUERENA, Deputy Attorney General of the State of California,
Attorneys for State of California, Defendant in Error.

CALIFORNIA STATE PRINTING OFFICE

CASE INDEX.

	PAGE
Commonwealth vs. Clark County National Bank, 219 S. W. 175	10, 12
Commonwealth vs. Dollar Savings Bank, 102 Atl. 569	15
Commonwealth vs. Thomas, 131 S. W. 797	16
Cooper vs. Reynolds, 77 U. S. 317	20
Cunnius vs. Reading, 198 U. S. 458	15, 18
Davis vs. Elmira Savings Bank, 161 U. S. 275	10, 11
Easton vs. Iowa, 188 U. S. 220	10, 23
First National Bank vs. Commonwealth, 137 S. W. 518	10, 12
Germantown Trust Co. vs Powell, 108 Atl. 441	16
Greenough vs. Peoples Savings Bank, 94 Atl. 706	15, 24
Guthrie vs. Harkness, 199 U. S. 148	9, 14
McClellan vs. Chipman, 164 U. S. 347	9, 10, 11, 13
Malone vs. Provident Institute for Savings, 86 N. E. 912	15
Merchants National Bank of Lafayette vs. Ford, 90 S. W. 260	10, 14, 18
National Bank vs. Commonwealth, 76 U. S. 353	9, 13, 14
Nelson vs. Blinn, 83 N. E. 889	15
Overby vs. Gordon, 177 U. S. 214	18
Pennoyer vs. Neff, 95 U. S. 714	18, 19
People ex rel First National Bank of Joliet vs. Brady, 110 U. S. 864	18
Provident Institution of Savings vs. Attorney General, 231 U. S. 660	15, 18, 24
Provident Institution for Savings vs. Malone, supra	28
State vs. Anglo & London Paris National Bank, 186 Cal. 746	8
State vs. Security Savings Bank, 154 Pac. 1070	16, 23
State of California vs. Security Savings Bank, 186 Cal. 419	19
State of Oregon vs. First National Bank, 123 Pac. 712	9, 12, 16, 18, 26
United States vs. Fox, 94 U. S. 315	18
Waite vs. Dowley, 94 U. S. 527	9, 13

SUBJECT INDEX.

	PAGE
STATEMENT OF THE CASE	1
ARGUMENT:	
I. Regulation of National Banks	9
II. The Escheat Power of the State	15
III. The Exercise of the Escheat Power in Section 1273 C. C. P. and Section 15 of the Bank Act	19
IV. The National Bank Act	24

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1922.

No. 276.

THE FIRST NATIONAL BANK OF SAN JOSE,
Plaintiff in Error,

vs.

STATE OF CALIFORNIA,
Defendant in Error.

BRIEF OF DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

This action was commenced by the State of California under the provisions of section 1273 of the Code of Civil Procedure and section 15 of the Bank Act of California.

Among the defendants, comprising seven banks and hundreds of depositors, was The First National Bank of San Jose.

Section 1273 C. C. P. reads as follows:

"All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest,

and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, escheat to the state. Whenever the attorney general shall be informed of such deposits, he shall commence an action or actions in the name of the State of California, in the superior court for the county of Sacramento, in which shall be joined as parties the bank or banks in which the moneys are deposited and the names of all such depositors. All or any number of depositors or banks may be included in one action. Service of process in such action or actions shall be made by delivery of a copy of the complaint and summons to the president, cashier or managing officer of each defendant bank, and by publication of a copy of such summons in a newspaper of general circulation published in said county for a period of four weeks. Upon the trial the court must hear all parties who have appeared therein, and if it be determined that the moneys deposited in any defendant bank or banks are unclaimed as hereinabove stated, then the court must render judgment in favor of the state declaring that said moneys have escheated to the state and commanding said bank or banks to forthwith deposit all such moneys with the state treasurer, to be received, invested, accounted for and paid out in the same manner and by the same officers as is provided in the case of other escheated property."

Section 15 of the California Bank Act is here quoted in full, as follows:

"All amounts of money heretofore or hereafter deposited with any bank to the credit of depositors who have not made a deposit on said account or withdrawn any part thereof or the interest and which shall have remained unclaimed for more than twenty years after the date of such deposit, or withdrawal of any part of the principal or interest, and where neither the depositor or any claimant has filed any notice with such bank showing his or her present residence, shall, with the increase and proceeds thereof, be deposited with the state treasurer after judgment in the manner provided in the Code of Civil Procedure. At the time of issuing the summons in the action provided for in section 1273 of the Code of Civil Procedure, the clerk shall also issue a notice signed by him, giving the title and number of said action, and referring to the complaint therein, and directed to all persons, other than those named as defendants therein, claiming any interest in any deposit mentioned in said complaint, and requiring them to appear within sixty days after the first publication of such summons, and show cause, if any they have, why the moneys involved in said action should not be deposited with the state treasurer as in said section provided, and notifying them that if they do not so appear and show cause, the state will apply to the court for the relief demanded in the complaint. A copy of said notice shall be attached to and published with the copy of said summons required to be published by said section, and at the end of the copy of such

notice so published there shall be a statement of the date of the first publication of said summons and notice. Any person interested may appear in said action and become a party thereto. Upon the completion of the publication of the summons and notice, and the service of the summons on the defendant bank, or banks, as in said Section 1273 of the Code of Civil Procedure provided, the court shall have full and complete jurisdiction over the state, and the said deposits and of the person of everyone having or claiming any interest in the said deposits, or any of them, and shall have full and complete jurisdiction to hear and determine the issues therein, and render the appropriate judgment thereon. The president or managing officer of every bank must, within fifteen days after the first day of January of every year, return to the superintendent of banks and to the state controller a sworn statement showing the names of depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding twenty years. Such statement shall show in detail the following matters, viz:

First—The name and last known place of residence or post office address of the person making such deposit;

Second—The amount and date of such deposit and whether the same are in moneys or securities, and if the latter, the nature of the same;

Third—The interest due on such deposit, if any, and the amount thereof;

Fourth—The sum total of such deposit, together with the interest added thereto due from such bank on account of such deposit or deposits

and the interest thereon to such depositor, but nothing contained herein shall require any corporation or person renting lock boxes or safes in vaults for storage purposes to open or report concerning property stored therein. Such reports itemized as aforesaid shall be signed by the person making the same and shall be sworn to before a person competent to administer oaths as a full, complete and truthful statement of each of the items therein contained.

The president or managing officer of every bank must, within fifteen days after the first day of January of every odd numbered year, return to the superintendent of banks a sworn statement showing the names of depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding ten years. Such statements shall show the amount of the account, the depositor's last known place of residence or post office address, and the fact of death, if known to such present or managing officer. Such president or managing officer must give notice of these deposits in one or more newspapers published in or nearest to the town or city where such bank has its principal place of business, at least once a week for four consecutive weeks, the cost of such publication to be paid pro rata out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the president or managing officer to be living. The superintendent of banks must incorporate in his subsequent report such returns made to him as provided in this section. If any president or managing officer of any bank neglects or refuses to make the sworn

statements required by this section, such bank shall forfeit to the State of California the sum of one hundred dollars a day for each day such default shall continue. Any president or managing officer of any bank who violates any of the provisions of this section shall forfeit to the State of California the sum of one hundred dollars a day for each and every day such violation shall continue. For the purposes of this section all deposits received by any bank under the provision of section thirty-one or section thirty-one *a* of this act shall be deemed to have been deposited with such bank at the time the deposit was made with the bank from which the deposit was transferred; *provided,* that any bank which shall make any deposit with the state treasurer in conformity with the provisions of this section shall not thereafter be liable to any person for the same, and any action which may be brought by any person against any bank for moneys so deposited with the state treasurer shall be defended by the attorney general without cost to such bank."

The complaint, so far as The First National Bank of San Jose is concerned, alleges, and the court found, that for more than twenty years prior to the institution of this action there was on deposit with The First National Bank of San Jose, to the credit of P. A. Campbell, who is also a defendant, the sum of eleven hundred ninety-two and 25/100 (1,192.25) dollars; that for more than twenty years prior to the institution of this action the depositor P. A. Campbell did not make any deposit to the credit of his said account or withdraw any part thereof, or any inter-

est or dividend accruing thereon; that the account, including interest and dividends, remained unclaimed for more than twenty years after the same became credited to the depositor P. A. Campbell, and for more than twenty years after the withdrawal of any part of the principal, or interest, or dividends; that the account was unclaimed; that the date of the last transaction in connection with the said account, whether by deposit or withdrawal of principal or interest or dividends, was on November 15, 1880; that neither the depositor P. A. Campbell, nor any claimant of said account, or of any interest or dividends thereon, filed any notice with the said bank showing the residence of the said depositor; that the said depositor was not known to be living by the president or managing officers of the said bank; that the name of the said depositor, together with the date of the last transaction in connection with his account, and the amount on deposit in said bank to the credit of such depositor were all contained in the annual statement filed by said bank with the State Controller of the State of California in January, 1917, as required by law; and that the Attorney General of the State of California was informed of all of the foregoing facts.

The complaint also alleged, and the court found, that summons was issued and notice to claimants given as required by section 1273, C. C. P., and by section 15 of the Bank Act; that summons, copy of complaint and notice to claimants were duly served upon the defendant The First National Bank of San

Jose; and that the summons and notice to claimants were published as required by those sections.

The defendant depositor P. A. Campbell, though duly served with process, failed to appear in this action. Upon these findings the trial court adjudged that the account in The First National Bank of San Jose to the credit of P. A. Campbell, involving the sum of eleven hundred ninety-two and 25/100 (1,192.25) dollars, escheated to the State of California, and the said bank was ordered to forthwith deposit that amount of money with the State Treasurer of the State of California.

From that judgment an appeal was taken to the District Court of Appeal of the State of California in and for the Third Appellate District, by which court the judgment of the trial judge was affirmed.

The appeal was pressed to the Supreme Court of the State of California, and that court affirmed the judgment of the trial court and adopted as its own the opinion of the District Court of Appeal.

State vs. *Anglo and London-Paris National Bank et al.*, 186 Cal. 746.

Upon a writ of error this cause between The First National Bank of San Jose and the State of California is before this court. The position here taken by the plaintiff in error, generally stated, is that the statutes of the State of California, above referred to, can not be legally applied to a national bank for the reason that national banks are subject only to the National Bank Act and federal control. The answer

of the defendant in error, in a word, is that those statutes properly apply to national banks doing business in the State of California.

ARGUMENT.

I.

REGULATION OF NATIONAL BANKS.

Defendant in error of course recognizes that national banks are instrumentalities of the federal government created for a public purpose and that, as such, they are necessarily subject, in the matter of their regulation, to the paramount authority of the United States; and it concedes, as it always has in this case, that any state legislation which tends to impair the utility of a national bank as a fiscal agent of the federal government is null and void.

This rule is not founded upon express constitutional provision but in the implied necessity for the use of such agency by the federal government. The existence of this rule does not exclude the right of a state to enact and enforce against a national bank laws which do not hinder the effective and useful operation of a national bank. That this is the law is settled beyond question by the following decisions:

National Bank vs. *Commonwealth*, 76 U. S. 353;

Waite vs. *Dowley*, 94 U. S. 527;

McClellan vs. *Chipman*, 164 U. S. 347;

Guthrie vs. *Harkness*, 199 U. S. 148;

State vs. *First National Bank*, 123 Pac. 712;

First National Bank vs. *Commonwealth,* 137 S. W. 518;

Commonwealth vs. *Clark County National Bank,* 219 S. W. 175;

Merchants National Bank of Lafayette vs. *Ford,* 90 S. W. 260;

Davis vs. *Elmira Savings Bank,* 161 U. S. 275;

Easton vs. *Iowa,* 188 U. S. 220.

Indeed, the *rule* perhaps should be stated to be, as was said in

McClellan vs. *Chipman, supra,*

that a state is authorized to control the dealings and contracts of national banks, and that the *exception* is that state law ceases to operate when it expressly conflicts with a federal law or tends to defeat its purpose.

The case of

Easton vs. *Iowa, supra,*

involved a direct conflict between state and federal legislation, and this court concluded that under such circumstances the state law could not be given operation. More particularly, the state law made it a criminal offense for a bank, when insolvent, to accept a deposit and it was held, for the following reasons, that the state law could not be applied to national banks:

> "Our conclusions, upon principle and authority, are that congress, having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred

upon such banks, and has the sole power to regulate and control the exercise of their operations; that congress has directly dealt with the subject of insolvency of such banks by giving control to the Secretary of the Treasury and the Comptroller of the Currency, who are authorized to suspend the operations of the banks and appoint receivers thereof when they become insolvent, or when they fail to make good any impairment of capital; that full and adequate provisions have been made for the protection of creditors of such institutions by requiring frequent reports to be made of their condition, and by the power of visitation by federal officers; that it is not competent for state legislatures to interfere, whether with hostile or friendly intentions, with national banks or their officers in the exercise of the powers bestowed upon them by the general government."

The same may fairly be said of the decision by this court in the case of

Davis vs. *Elmira Savings Bank, supra,*

wherein it was held that a state law providing for the payment by the receiver of an insolvent bank, on a preferred basis, of deposits made in that bank by savings banks, could not be applied to an insolvent national bank, because to do so would conflict with the terms of Section 5236 of the Revised Statutes of the United States.

The two cases just mentioned illustrate what we called, in the earlier case of

McClellan vs. *Chipman, supra,*

exceptions to the rule.

The Supreme Court of the State of Oregon was concerned in the case of

State vs. *First National Bank of Portland,* 123 Pac. 712,

with an Oregon statute providing for the escheat of credits held by depositors against banks, and in reply to the contention that the law could not be enforced against a national bank the court said:

> "that national banks are only exempted from state legislation to the extent that such legislation impairs their efficiency to perform the functions which they were designed to serve and that the legislation here proposed does not have this effect."

In the case of

First National Bank vs. *Commonwealth,* 137 Fed. 518,

the Supreme Court of Kentucky was concerned with the validity, in its application to a national bank, of a state law providing that a corporation engaged in banking should not hold real estate more than five years unless it was diverted by the bank to a necessary use, under penalty of escheat, and concluded that the law was enforceable against a national bank which had violated its terms.

The same conclusion was reached in a similar case in

Commonwealth vs. *Clark County National Bank,* 219 S. W. 175.

In the case of

National Bank vs. *Commonwealth,* 76 U. S. 353, it was held by the court that state taxation of national bank stock was not an interference with federal regulations, that a national bank is not wholly withdrawn from the operation of state legislation, and that

> "Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers, into an unauthorized and unjustifiable invasion of the rights of the states.
> * * * * * * *
> It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional."

Later, in the case of

Waite vs. *Dowley,* 94 U. S. 527,

this court declared valid a state law requiring cashiers of national banks to transmit to town clerks a list of their shareholders, with the number of their shares.

A state statute prohibiting preferences by an insolvent debtor, as applied to a preference given to a national bank, was upheld in

McClellan vs. *Chipman, supra,*

where, in discussing the proposition of state interference with operation of national banks, the court said:

> "These two propositions, which are distinct, yet harmonious, practically contain a rule and an

> exception, the rule being the operation of general state laws upon the dealings and contracts of national banks, the exception being the cessation of the operation of such laws whenever they expressly conflict with the laws of the United States or frustrate the purpose for which the national banks were created, or impair their efficiency to discharge the duties imposed upon them by the law of the United States."

The common-law right to inspect books of a national bank was held to be enforceable, inasmuch as the exercise of that right was not prohibited by act of congress, in

Guthrie vs. *Harkness,* 199 U. S. 148.

Following the decision by this court in

National Bank vs. *Commonwealth, supra,*

it was said, in the case of

Merchants National Bank vs. *Ford,* 99 S. W. 260,

that

> "As regards the construction of contracts, the transfer of property, the collection of debts, and the liability to suit, national banks are subject to the control of the state where they are situated."

The test in this cause is whether the California statutes, given operation against a national bank, would impair its utility as an instrumentality of the federal government. It is not contended by the plaintiff in error that there is any statute of the United States providing for the forfeiture of what may be

called inactive, dormant, or unclaimed deposits in national banks. In fact the federal law is absolutely silent upon the subject of the escheat of unclaimed accounts in national banks. It is suggested, however, by the plaintiff in error that there are certain provisions in the national banking act which would be interfered with if plaintiff in error is obliged to turn over to the State Treasurer the sum of money which it owes, and which it holds to the credit of, the depositor P. A. Campbell. The specific considerations urged by plaintiff in error in this connection, we will treat, as a matter of convenience, under a separate head.

II.

THE ESCHEAT POWER OF THE STATE.

The authorities are practically uniform that a state may escheat unclaimed and apparently abandoned property situated within its borders. Among the many cases affirming the existence of this power are:

Malone vs. *Provident Institutions for Savings,* 86 N. E. 912, affirmed in

Provident Institution for Savings vs. *Malone,* 221 U. S. 660;

Cunnius vs. *Reading,* 198 U. S. 458;

Nelson vs. *Blinn,* 83 N. E. 889;

Commonwealth vs. *Dollar Savings Bank,* 102 Atl. 569;

Greenough vs. *Peoples Savings Bank,* 94 Atl. 706;

Commonwealth vs. *Thomas*, 131 S. W. 797;

Germantown Trust Co. vs. *Powell*, 108 Atl. 441;

State vs. *First National Bank*, 123 Pac. 712;

State vs. *Security Savings Bank*, 154 Pac. 1070 (Cal.).

Not only may a state, in the exercise of its power over abandoned property within its jurisdiction, take such property into its custody in the interest of the missing owner as well as for the sake of public expediency, but there has also been established the doctrine that a state may put an end to the former ownership of such property and may terminate the rights of the absentee owner if perchance he should appear before the property has actually entered the possession of the state. This doctrine is clearly and strongly announced in the case of

Commonwealth vs. *Thomas*, 131 S. W. 797,

wherein the court said:

> "In this country the policy on which is rested our statute of escheats is not so much a reverter to the original title holder, though that idea undoubtedly had its place in the adoption of the policy, but it is upon the right and power of the government, which is the sovereign, to possess property found within its jurisdiction for which there appears no owner. On this ground peculiarly rests the doctrine of escheats as applied to personalty. Property, the owner of which has died intestate and without heirs, whether it be personal or real property, would be the subject of controversy among such as might seek to grab

it, without any right in any of them. It would therefore be a source of confusion and strife in the community. Or, if let alone, it would decay, or become waste and unproductive, whereas the interests of society required that it be used, and enjoyed. But it is equally important that it be enjoyed by the one entitled to it. Hence when there is no original claimant, the property is taken possession of by the state for the benefit of all. A convenient and sufficient name for the act is that given in the statute, 'escheat.' Whether or not people in this country hold property as a right conferred by the government, they hold its title subject to the reasonable and necessary regulation by government as to how title shall be vested and how and for what causes lost. It is then competent for the state to declare the public welfare to be that property within its borders shall not lie unclaimed for, say, eight years, and, if it does, that that fact shall warrant the state in taking possession of it, and selling it so as to again bring it into a legal ownership, where it will serve the state and society by taxes and whatever productivity it may be susceptible of. The state may in its generosity, or sense of fairness, say that it will not in such case hold the proceeds against the original claimant, if he subsequently appears, and may provide for his reimbursement. It may do less, as by shortening the time in which it will make reimbursement, or it may exact conditions. In the instance here the state has declared that, for escheated property which it dedicates to purposes of education, it will not make reimbursement. Rather, it fails to make provisions for it in such instances. It was in the com-

petency of the state to so provide, or fail to provide, as it saw fit. The policy is one of legislative discretion, and is not a condition precedent to the state's exercise of power."

The subject of an escheat must, of course, have its situs within the state, but, speaking generally, every state possesses exclusive jurisdiction over property within its boundaries.

Pennoyer vs. *Neff,* 95 U. S. 714;

Overby vs. *Gordon,* 177 U. S. 214;

Cunnius vs. *Reading,* 198 U. S. 458;

Provident Institution of Savings vs. *Attorney General,* 231 U. S. 660;

Merchants National Bank vs. *Ford,* 99 S. W. 260;

State vs. *First National Bank,* 123 Pac. 712;

United States vs. *Fox,* 94 U. S. 315.

This proposition is expressed by this court in the decision in the case of

People ex rel First National Bank of Joliet vs. *Brady,* 110 U. S. 864:

"Certain powers of government belong exclusively to the states, and certain powers exclusively to the national government. The power to regulate property within the limits of the state, the modes of acquiring and transferring it, and the rules of descent and distribution of property are subjects belonging exclusively to the jurisdiction of the state."

III.

THE EXERCISE OF THE ESCHEAT POWER IN SECTION 1273 C. C. P. AND SECTION 15 OF THE BANK ACT.

A proceeding under these California statutes is *quasi in rem,* so it has been held by the Supreme Court of California in the case of

State of California vs. *Security Savings Bank,* 186 Cal. 419 (425),

where it was said, with particular reference to Section 1273, C. C. P. and to a judgment obtained by the state under that section:

> "The judgment does not seek to declare or enforce any obligation of the depositors or any of them to any other person or persons. Its sole object with respect to them is to act upon the obligations they respectively hold against the bank, to effect a substitution of the state for the bank with respect to such obligation, and to transfer the title of that particular property of the depositors, respectively, to the state. Such proceedings are not proceedings strictly *in rem;* but they are proceedings *quasi in rem.* The proceeding is not in that respect distinguishable from an ordinary garnishee process against a debtor of a defendant to appropriate the debt to the payment of the plaintiff's demand. In such cases the defendant in the action may be a non-resident or not within reach of the process of the state court. But if service is made on the garnishee, the court has jurisdiction to dispose of that asset of the defendant and apply it to the payment of the plaintiff's debt. In *Pennoyer* vs. *Neff,* 95 U. S. 727 (24 L. Ed. 565; see, also, Rose's U. S. Notes), the court

said: 'The law assumes that property is always in the possession of its owner, in person or by agent; and it proceeds upon the theory that its seizure will inform him, not only that it is taken into the custody of the court, but that he must look to any proceedings authorized by law upon such seizure for its condemnation and sale. Such service may also be sufficient in cases where the object of the action is to reach and dispose of property in the state, or of some interest therein, by enforcing a contract or a lien respecting the same, or to partition it among different owners, or, when the public is a party, to condemn and appropriate it for a public purpose. In other words, such service may answer in all actions which are substantially proceedings *in rem*.' The court was there discussing the validity of attachment proceedings against one who was a non-resident of the state and had no service of process except by publication. In *Cooper* vs. *Reynolds*, 77 U. S. (10 Wall.) 317, (19 L. Ed. 931; see, also, Rose's U. S. Notes, the court was considering the validity of a sale rendered upon a judgment in attachment where the only service upon the defendant was by publication. The court said: 'Jurisdiction of the *res* is obtained by a seizure under process of the court, whereby it is held to abide such order as the court may make concerning it * * * . So also while the general rule in regard to jurisdiction *in rem* requires the actual seizure and possession of the *res* by the officers of the court, such jurisdiction may be acquired by acts which are of equivalent import, and which stand for and represent the dominion of the court over the thing, and in effect subject it to the con-

trol of the court. Among this latter class is the levy of a writ of attachment or seizure of real estate, which being incapable of removal, and lying within the territorial jurisdiction of the court, is for all practical purposes brought under the jurisdiction of the court by the officer's levy of the writ and return of that fact to the court. So the writ of garnishment or attachment, or other form of service, on a party holding a fund which becomes the subject of litigation, brings that fund under the jurisdiction of the court, though the money may remain in the actual custody of one not an officer of the court.' The service of the summons on the bank is, under the doctrine thus established, the equivalent of a seizure of the property of each depositor in his account with the bank and gives the court jurisdiction over it to the same extent as in cases in garnishment and other proceedings *quasi in rem*. To the same point, see 6 Corpus Juris, page 90, where many cases are cited."

The property which is affected by this action is property belonging to the depositor P. A. Campbell. It is not, as the bank has assumed throughout its argument, property belonging to the bank which is directly affected. The language of section 1273, C. C. P., is similar to that employed in all of the escheat laws involved in the decisions hereinabove cited, but it of course means that the property which escheats to the state is the property belonging to the depositor, and that property consists, technically speaking, of a credit held by the depositor against the bank. The value of that credit is measured by the amount of

money deposited, plus interest and dividends. In this cause the trial court held that the account of P. A. Campbell escheated to the state and that the value of that account or credit was eleven hundred ninety-two and 25/100 (1,192.25) dollars, which sum the bank was ordered to deliver to the State Treasurer of the State of California.

The state is not claiming that it is entitled to the possession of something which the bank owns, but that it is, within its sovereign power and in the interest of public policy, entitled to assert and enforce against the bank such rights as the depositor had against the depositary by reason of the relation of creditor and debtor between the depositor and the bank. Under the principle of escheat the state contends that it has stepped into the shoes of the depositor and that the bank can not be heard to urge against the state in this escheat proceeding any defense which it could not have successfully raised against the depositor in a controversy between the depositor and the bank.

The state has at no time contended that the statutes here in question operate against the property owned by the bank. On the contrary the state has at all times urged, and the District Court of Appeal and the Supreme Court of the State of California in this action have held, that it was the intention of the legislature of California to provide, in those statutes, that the right or claim of a depositor against the bank is the property that is forfeited or escheated.

The precise language of the District Court of Appeal in this connection is as follows:

> "We think the reasonable interpretation is that the property affected by the escheat is the credit held by the depositor against the bank."

This interpretation of the purpose and meaning of the state law will be followed by this court, according to its decision in the case of

Easton vs. *Iowa,* 188 U. S. 220 (228).

It is assumed by the plaintiff in error that a judgment in favor of the state under Section 1273, C. C. P., has the effect of causing "the title of the bank" to a deposit to pass from the bank to the state. From what has just been said it is plain that such a judgment does not operate against property belonging to a bank, and it is still an open question whether such a judgment takes the title to the escheated property from the depositor and vests it in the state.

State vs. *Security Savings Bank,* 186 Cal. 419 (430-431).

It is also urged by the plaintiff in error, without any independent supporting argument for the contention, that the statutes in question deny due process of law and ~~impair~~ violate the prohibition in the federal constitution against laws impairing the obligation of contracts. The statutes have been upheld by the Supreme Court of this state against the first claim in

State of California vs. *Security Savings Bank,* 186 Cal. 419;

and the second claim is disposed of adversely to the position assumed by the plaintiff in error in the following cases:

Greenough vs. *Peoples Savings Bank*, 94 Atl. 706;

Provident Institution of Savings vs. *Attorney General*, 231 U. S. 660.

IV.

THE NATIONAL BANK ACT.

No court to which this cause has been presented has held that the California statutes violate or interfere with any provisions of the National Bank Act or any federal statute. This is said because of the manner in which the errors here complained of have been specified by the plaintiff in error.

Aside from the considerations already discussed, the remainder of the argument in support of this appeal is based upon the claim that those sections of the Revised Statutes, or provisions of the National Bank Act, dealing with the matters of deposits, loans, reserves and liquidation of national banks will be nullified if the California statutes are given operation against such banks.

We acknowledge the power of a national bank to receive deposits, and that such power has been conferred by express terms in the National Bank Act, but one will search that act in vain to find any provision which requires that a deposit can not be with-

drawn or, in other words, that a depositor can not cash in his credit at such time as he may desire.

It is not denied that the depositor P. A. Campbell could at any time while the bank is a going concern withdraw his deposit with interest, or—what is substantially equivalent—require the same amount to be paid to him in honor of his check; nor is it denied that he could assign his claim and thereby clothe the assignee with the same right. In either of such events it would not be deemed an interference with the proper administration of the business of the bank or an impairment of its usefulness as a governmental agency. Indeed, such withdrawal or the satisfaction of such claim would be in entire harmony with one of the primary purposes of the organization and operation of such banks and is contemplated by the very terms of the charter; and we surmise that the efficiency of national banks would be substantially impaired, through lack of depositors, if they held out the right to deposit only upon the condition that deposits would remain with them indefinitely or at least until their dissolution.

This action being directed against property and property rights of the depositor P. A. Campbell, it is but an incident that the assets of the plaintiff in error, which of course are made up in part of deposits, will be depleted if the bank is obliged to pay to the state the value of the outstanding credit in the name of that depositor. Impairment of the useful-

ness of a national bank and hence unlawful state regulation was alleged against a similar escheat statute in the case of

State vs. First National Bank of Portland, supra,

but the court said:

> "It is true that it is urged that defendant's assets will be depleted *pro tanto* by requiring it to pay this money over to the state; but it is also true that its liabilities will be extinguished to the same extent and the objection is without merit."

It is also argued that the power of a national bank to loan money depends upon the amount of its deposits, and that this power will be diminished and abridged by the enforcement of the laws here in question. The same argument is made with respect to the borrowing capacity of national banks and their obligation to pay to the federal government a so-called "duty" measured by the average amount of deposits. Plaintiff in error does not appreciate that the state is picking up the abandoned rights of the depositor and is demanding that the bank recognize those rights and turn over to the state the value thereof, and that the state is acting in the place of the depositor in escheating an unclaimed bank account or credit. A depositor dealing with a national bank is not compelled to await the dissolution of the bank before he can receive the whole or a part of the money credited to him on the books of the bank, and therefore no power or right in the bank is diminished or abridged by the withdrawal of that money either

by the depositor, or by the sovereign, his assignee, in a case of escheat. Of course, the ability of a national bank to loan money depends upon the amount of its deposits, and it might be a great advantage to such corporation for the depositors to allow their money to be so used indefinitely, but the law does not require it nor does it impose any such duty upon any one succeeding to the interest of the depositor.

Substantially the same argument is advanced in connection with those provisions of the National Bank Act with reference to liquidation, both voluntary and involuntary, and what has already been said by us in reply is applicable to those provisions. This record presents no case of dissolution or of an attempt by the state to enforce a disposition of assets in a manner different from that prescribed by the National Bank Act. Even in a case of dissolution, under the very terms of that act, the depositors are first paid, if there are sufficient funds, to the extent of their credits against the bank and no further, and any balance that may remain after the depositors have been provided for is distributed not to the then depositors but to the shareholders of the bank. Again we assert that the state stands in the place of depositor in its relation to the bank and is vested, by operation of law, with all rights that the depositor had against the bank. In a case of dissolution, the state would not be taking from the bank or from some of its shareholders a part of the property, remaining to the bank or the shareholders after the depositors had been provided for, but

would be, in legal contemplation, a depositor itself, entitled to receive from the bank, if there were funds, the value of the credit held by it as a depositor against the bank.

It is apparently thought by the plaintiff in error that the *tontine* principle is involved in the disposition of the deposits made in a national bank, that is to say upon the dissolution of the bank the then depositors would receive the money of those absent and unknown, and reliance is had upon the following language appearing in the decision by this court in the case of

Provident Institution for Savings vs. *Malone, supra:*

> "Neither the charter nor the by-laws create anything in the nature of a tontine under which, on dissolution of the corporation, the then depositors would receive the money of those absent and unknown."

The record in this case does not show that the charter or by-laws of the bank created anything in the nature of such a tontine. There is no provision in the National Bank Act which creates anything of that nature. On the contrary, the National Bank Act provides that in case of dissolution of a national bank the assets shall be used to pay the claims of the then depositors and the surplus then remaining, if any, shall be distributed to the *shareholders,* not to the depositors (Sec. 5236, Rev. Stats.). We are unable to understand how the bank can argue that such language was used by this court with national banks in mind,

when the National Bank Act provides for a disposition of assets, upon dissolution, quite different from that which would be required by a tontine such as the court suggests.

In short, we submit that there is no provision in the National Bank Act which is interfered with by the judgment here appealed from. We have squarely met all of the points made by the plaintiff in error by showing that in no instance has a power or right conferred by Congress upon national banks been impaired or abridged.

The statutes here involved are but an exercise by the state of its sovereignty to regulate the disposition of presumably abandoned property within its borders, and we submit that the judgment of the state courts should not be disturbed.

Respectfully presented.

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